Supreme Court, U.S.
FILED
MAR 5 - 2007
OFFICE OF THE CLERK

No. 06-8120

IN THE

Supreme Court of the United States

BRUCE EDWARD BRENDLIN,
Petitioner,

v.

THE STATE OF CALIFORNIA,
Respondent.

On Writ of Certiorari to the Supreme Court of California

JOINT APPENDIX

EDMUND G. BROWN, JR.
MARY JO GRAVES
MICHAEL P. FARRELL
DONALD E. DENICOLA
MICHAEL A. CANZONERI
PAUL A. BERNADINO
OFFICE OF THE ATTORNEY GENERAL OF CALIFORNIA
1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
(916) 324.5821

CLIFFORD E. ZALL *
1300 I Street
Sacramento, CA 95814
(916) 324.5281

Counsel of Respondent

ELIZABETH CAMPBELL *
2407 J Street
Suite 301
Sacramento, CA 95816
(916) 441.3792

JEFFREY T. GREEN
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
(202) 736-8000

Counsel of Petitioner

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

PETITION FOR CERTIORARI FILED NOVEMBER 28, 2006
CERTIORARI GRANTED JANUARY 19, 2007

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CLERK'S DOCKET AND MINUTES

SUPEI & COURT OF CALIFORNIA, COUNTY OF TTER

DEFENDANT (NAME): BRENDLIN, BRUCE EDWARD
ARRAIGNMENT

CASE NO: CR-F -01-0002703
DATE: November 29, 2001

JUDGE: CHANDLER DEPUTY CLERK: GRANT COURT REPORTER: _____

PEOPLE REPRESENTED BY: _____ DEFENDANT REPRESENTED BY: _____

☑ DEFENDANT PRESENT ☑ IN CUSTODY ☐ DEFENDANT NOT PRESENT ☐ INTERPRETER SWORN _____

☐ PROBATION OFFICER _____

FAILURE TO APPEAR:

☐ O/R revoked ☐ Bail forfeited ☐ Warrant ordered, bail $ _____ (Section _____) ☐ Counsel relieved of further representation

☐ Execution stayed to _____ ☐ Trial date of _____ vacated

☐ Stay on warrant dissolved ☐ Legal excuse for nonappearance, order for ☐ Forfeiture ☐ Revocation set aside ☐ Warrant recalled ☐ Order for warrant rescinded

☐ Court Costs imposed $ _____ due by _____ ☐ Bail/O.R. reinstated

ARRAIGNMENT:

☐ Failure to appear ☐ Violation of ☐ Probation ☐ Court Order ☐ Information ☑ Complaint ☐ Clerk's arraignment ☐ Citation

☑ In custody ☑ Correct name determined ☐ Arraignment continued to obtain private counsel ☐ Arraignment continued for entry of plea

☐ Complaint amended to ☐ Show correct name _____ ☐ Add count _____

☐ Formal arraignment waived ☑ Charges read ☐ Defendant orally advised of rights ☑ Statement of rights incorporated herein

☐ Time waived O/R release ☐ granted ☑ denied, bail set at $ 200,000 ☐ O/R Agreement incorporated herein ☐ Arraignment continued to obtain license

PLEA OF NOT GUILTY:

☑ Plea(s) of NOT GUILTY entered ☐ Prior(s) denied ☐ Time waived ☑ Public Defender appointed ☐ Conflict counsel appointed _____

☐ Denial entered ☑ Notice, Sentence, Calendar, Commitment incorporated herein

PRELIMINARY HEARING:

☐ Preliminary Hearing Held/Waived ☐ Exhibit(s) marked: _____ ☐ Admitted: _____

☐ Witness(es) testified: _____ ☐ Certification incorporated herein ☐ Information Filed _____

COURT TRIAL/MOTIONS/VIOLATION OF PROBATION HEARING:

☐ Witness(es) testified: _____

☐ Exhibit(s) marked: _____ ☐ Admitted: _____

☐ Motion(s): _____ ☐ Granted ☐ Denied

☐ Defendant found not guilty/ guilty of _____

☐ Defendant found in violation of probation by _____

☐ Count(s) dismissed _____ ☐ Court's motion ☐ District Attorney's motion ☐ Violation of probation dismissed

CONTINUANCES:

☐ Notice, Sentence, Calendar, Commitment incorporated herein ☐ Time waived ☐ Jury trial waived/ counsel joins ☐ Hearing continued ☐ Referred for diversion eligibility

☐ Preliminary hearing confirmed _____ ☐ Violation of probation hearing confirmed _____ ☐ Arraignment waived

☐ Jury Trial/Trial readiness set/reset/confirmed

PLEA OF GUILTY:

☐ Complaint amended to make count _____ a misdemeanor violation of _____

☐ Complaint amended to add/make count _____ a violation of _____ ☐ Arraignment waived

☐ Information amended to add/make count _____ a violation of _____ ☐ Arraignment waived

☐ Advised of maximum penalties and waived constitutional rights ☐ Entry of plea form incorporated herein

☐ Defendant ☐ Counsel for defendant pleads ☐ Guilty _____ ☐ No Contest _____

☐ Admits prior(s) _____ ☐ Stipulated sentence _____ ☐ No immediate State Prison

☐ Admits violation of ☐ probation ☐ court order by _____

☐ Count(s) _____ dismissed in interest of justice ☐ Violation of probation dismissed

☐ Motion to dismiss remaining count(s) taken under submission ☐ Referred to Probation Department for sentencing report

☐ Time waived ☐ Arbuckle waiver ☐ Given ☐ Declined ☐ O/R Agreement incorporated herein ☐ Jury Trial vacated

☐ Harvey waiver as to Count(s) _____ ☐ Certification incorporated herein ☐ Notice, Sentence, Calendar, Commitment incorporated herein

JUDGMENT/SENTENCE:

☐ No legal cause why judgment should not be pronounced ☐ Time waived

☐ Formal arraignment waived ☐ Probation report waived ☐ Probation denied

☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ____ (_____ + _____)

☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ____ (_____ + _____)

☐ Defendant sentenced to _____ days jail _____ ☐ Concurrent/Consecutive to _____

☐ Defendant to pay fine $ _____ ☐ forthwith ☐ Defendant admitted to probation _____ months ☐ Summary ☐ Formal

☐ Probation reinstated and modified ☐ Probation terminated ☐ Diversion granted

☐ Violation of probation dismissed ☐ Public Defender fees of $ _____ ordered

☐ Remaining count(s) dismissed ☐ Count(s) dismissed _____

☐ Criminal proceedings suspended and defendant to be placed at: ☐ California Rehabilitation Center ☐ _____ State Hospital

☐ Notice, Sentence, Calendar, Commitment ☐ Promise to pay ☐ Order incorporated herein

☐ $ _____ Restitution fine pursuant to § 1202.4(b) P.C. ☐ To be collected by CDC pursuant to §2085.5 P.C.

☐ Restitution fine pursuant to §1202.45 P.C. stayed pending successful completion of parole.

MISCELLANEOUS:

☐ No complaint filed ☐ Matter held pending ☐ Notice, Sentence, Commitment incorporated herein ☐ Case dismissed in the interest of justice

☐ Dropped from calendar ☐ Refusal on file ☐ O/R Agreement incorporated herein ☐ Substitution of counsel, Public Defender relieved

☐ Request for dismissal & Order filed ☐ Warrant recalled ☐ Conflict declared, counsel relieved, conflict counsel appointed _____

☐ Motions(s): _____ ☐ Granted ☐ Denied ☐ Continued

☐ _____

☐ _____

☐ _____

☐ _____

BEST AVAILABLE COPY

CLERK'S DOCKET AND MINUTES

SUPERI. . COURT OF CALIFORNIA, COUNTY OF S . ER

DEFENDANT (NAME): BRENDLIN, BRUCE EDWARD — CASE NO: CR-F -01-0002703

PRELIM PRETRIAL CONF — DATE: December 5, 2001

JUDGE: Cameron — DEPUTY CLERK: L. Lawrence — COURT REPORTER: Mary Wyllie

PEOPLE REPRESENTED BY: Fred Schroeder — DEFENDANT REPRESENTED BY: Tim Warriner

☒ DEFENDANT PRESENT ☒ IN CUSTODY ☐ DEFENDANT NOT PRESENT ☐ INTERPRETER SWORN _____

☐ PROBATION OFFICER _____

FAILURE TO APPEAR

☐ O/R revoked ☐ Bail forfeited ☐ Warrant ordered, bail $ _____ (Section _____) ☐ Counsel relieved of further representation

☐ Execution stayed to _____ ☐ Trial date of _____ vacated

☐ Stay on warrant dissolved ☐ Legal excuse for nonappearance, order for ☐ Forfeiture ☐ Revocation set aside ☐ Warrant recalled ☐ Order for warrant rescinded

☐ Court Costs imposed $ _____ due by _____ ☐ Bail/O.R. reinstated

ARRAIGNMENT

☐ Failure to appear ☐ Violation of ☐ Probation ☐ Court Order ☐ Information ☐ Complaint ☐ Clerk's arraignment ☐ Citation

☐ In custody ☐ Correct name determined ☐ Arraignment continued to obtain private counsel ☐ Arraignment continued for entry of plea

☐ Complaint amended to ☐ Show correct name _____ ☐ Add count _____

☐ Formal arraignment waived ☐ Charges read ☐ Defendant orally advised of rights ☐ Statement of rights incorporated herein

☐ Time waived O/R release ☐ granted ☐ denied, bail set at $ _____ ☐ O/R Agreement incorporated herein ☐ Arraignment continued to obtain license

PLEA OF NOT GUILTY:

☐ Plea(s) of NOT GUILTY entered ☐ Prior(s) denied ☐ Time waived ☐ Public Defender appointed ☐ Conflict counsel appointed _____

☐ Denial entered ☐ Notice, Sentence, Calendar, Commitment incorporated herein

PRELIMINARY HEARING

☐ Preliminary Hearing Held/Waived ☐ Exhibit(s) marked: _____ ☐ Admitted: _____

☐ Witness(es) testified: _____ ☐ Certification incorporated herein ☐ Information Filed _____

COURT TRIAL/MOTION/VIOLATION OF PROBATION HEARING

☐ Witness(es) testified: _____

☐ Exhibit(s) marked: _____ ☐ Admitted: _____

☐ Motion(s): _____ ☐ Granted ☐ Denied

☐ Defendant found not guilty/ guilty of _____

☐ Defendant found in violation of probation by _____

☐ Count(s) dismissed _____ ☐ Court's motion ☐ District Attorney's motion ☐ Violation of probation dismissed

CONTINUANCES:

☐ Notice, Sentence, Calendar, Commitment incorporated herein ☐ Time waived ☐ Jury trial waived/ counsel joins ☐ Hearing continued ☐ Referred for diversion eligibility

☒ Preliminary hearing confirmed 12-20-01 at 9AM ☐ Violation of probation hearing confirmed _____ ☐ Arraignment waived

☐ Jury Trial/Trial readiness set/reset/confirmed

PLEA OF GUILTY:

☐ Complaint amended to make count _____ a misdemeanor violation of _____

☐ Complaint amended to add/make count _____ a violation of _____ ☐ Arraignment waived

☐ Information amended to add/make count _____ a violation of _____ ☐ Arraignment waived

☐ Advised of maximum penalties and waived constitutional rights ☐ Entry of plea form incorporated herein

☐ Defendant ☐ Counsel for defendant pleads ☐ Guilty _____ ☐ No Contest _____

☐ Admits prior(s) _____ ☐ Stipulated sentence _____ ☐ No immediate State Prison

☐ Admits violation of ☐ probation ☐ court order by _____

☐ Count(s) _____ dismissed in interest of justice ☐ Violation of probation dismissed

☐ Motion to dismiss remaining count(s) taken under submission ☐ Referred to Probation Department for sentencing report

☐ Time waived ☐ Arbuckle waiver ☐ Given ☐ Declined ☐ O/R Agreement incorporated herein ☐ Jury Trial vacated

☐ Harvey waiver as to Count(s) _____ ☐ Certification incorporated herein ☐ Notice, Sentence, Calendar, Commitment incorporated herein

JUDGMENT/SENTENCE:

☐ No legal cause why judgment should not be pronounced ☐ Time waived

☐ Formal arraignment waived ☐ Probation report waived ☐ Probation denied

☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ___ (_____ + _____)

☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ___ (_____ + _____)

☐ Defendant sentenced to _____ days jail _____ ☐ Concurrent/Consecutive to _____

☐ Defendant to pay fine $ _____ ☐ forthwith ☐ Defendant admitted to probation _____ months ☐ Summary ☐ Formal

☐ Probation reinstated and modified ☐ Probation terminated ☐ Diversion granted

☐ Violation of probation dismissed ☐ Public Defender fees of $ _____ ordered

☐ Remaining count(s) dismissed ☐ Count(s) dismissed _____

☐ Criminal proceedings suspended and defendant to be placed at: ☐ California Rehabilitation Center ☐ _____ State Hospital

☐ Notice, Sentence Calendar, Commitment ☐ Promise to pay ☐ Order incorporated herein

☐ $ _____ Restitution fine pursuant to § 1202.4(b) P.C. ☐ To be collected by CDC pursuant to §2085.5 P.C.

☐ Restitution fine pursuant to §1202.45 P.C. stayed pending successful completion of parole.

MISCELLANEOUS:

☐ No complaint filed ☐ Matter held pending ☐ Notice, Sentence, Commitment incorporated herein ☐ Case dismissed in the interest of justice

☐ Dropped from calendar ☐ Refusal on file ☐ O/R Agreement incorporated herein ☐ Substitution of counsel, Public Defender relieved

☐ Request for disqualification & Order filed ☐ Warrant recalled ☐ Conflict declared, counsel relieved, conflict counsel appointed _____

☐ Motions(s): _____ ☐ Granted ☐ Denied ☐ Continued

☐ _____

☐ _____

☐ _____

☐ _____

00005

2

CLERK'S DOCKET AND MINUTES

SUPE.. JR COURT OF CALIFORNIA, COUNTY OI TTER

DEFENDANT (NAME): BRENDLIN, BRUCE EDWARD
PRELIMINARY HEARING

CASE NO: CR-F -01-0002703
DATE: December 7, 2001

JUDGE: Damon DEPUTY CLERK: MLourenda COURT REPORTER: Julie Martinez

PEOPLE REPRESENTED BY: Susan Green DEFENDANT REPRESENTED BY: Tom Warriner

☑ DEFENDANT PRESENT ☐ IN CUSTODY ☐ DEFENDANT NOT PRESENT ☐ INTERPRETER SWORN _____
☐ PROBATION OFFICER _____

FAILURE TO APPEAR
☐ O/R revoked ☐ Bail forfeited ☐ Warrant ordered, bail $ _____ (Section _____) ☐ Counsel relieved of further representation
☐ Execution stayed to _____ ☐ Trial date of _____ vacated
☐ Stay on warrant dissolved ☐ Legal excuse for nonappearance, order for ☐ Forfeiture ☐ Revocation set aside ☐ Warrant recalled ☐ Order for warrant rescinded
☐ Court Costs imposed $ _____ due by _____ ☐ Bail/O.R. reinstated

ARRAIGNMENT
☐ Failure to appear ☐ Violation of ☐ Probation ☐ Court Order ☐ Information ☐ Complaint ☐ Clerk's arraignment ☐ Citation
☐ In custody ☐ Correct name determined ☐ Arraignment continued to obtain private counsel ☐ Arraignment continued for entry of plea
☐ Complaint amended to ☐ Show correct name _____ ☐ Add count _____
☐ Formal arraignment waived ☐ Charges read ☐ Defendant orally advised of rights ☐ Statement of rights incorporated herein
☐ Time waived O/R release ☐ granted ☐ denied, bail set at $_____ ☐ O/R Agreement incorporated herein ☐ Arraignment continued to obtain license

PLEA OF NOT GUILTY
☐ Plea(s) of NOT GUILTY entered ☐ Prior(s) denied ☐ Time waived ☐ Public Defender appointed ☐ Conflict counsel appointed _____
☐ Denial entered ☐ Notice, Sentence, Calendar, Commitment incorporated herein

PRELIMINARY HEARING
☐ Preliminary Hearing ☐ Held ☐ Waived ☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Witness(es) testified: Robert Brokenbrough, Deputy Garbutt ☐ Certification incorporated herein ☐ Information Filed _____

COURT TRIAL/MOTION/VIOLATION OF PROBATION HEARING
☐ Witness(es) testified: _____
☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Motion(s): _____ ☐ Granted ☐ Denied
☐ Defendant found not guilty/ guilty of _____
☐ Defendant found in violation of probation by _____
☐ Count(s) dismissed _____ ☐ Court's motion ☐ District Attorney's motion ☐ Violation of probation dismissed

CONTINUANCES
☑ Notice, Sentence, Calendar, Commitment incorporated herein ☐ Time waived ☐ Jury trial waived/ counsel joins ☑ Hearing continued ☐ Referred for diversion eligibility
☐ Preliminary hearing confirmed _____ ☐ Violation of probation hearing confirmed _____ ☐ Arraignment waived
☐ Jury Trial/Trial readiness set/reset/confirmed

PLEA OF GUILTY
☐ Complaint amended to make count _____ a misdemeanor violation of _____
☐ Complaint amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Information amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Advised of maximum penalties and waived constitutional rights ☐ Entry of plea form incorporated herein
☐ Defendant ☐ Counsel for defendant pleads ☐ Guilty _____ ☐ No Contest _____
☐ Admits prior(s) _____ ☐ Stipulated sentence _____ ☐ No immediate State Prison
☐ Admits violation of ☐ probation ☐ court order by _____
☐ Count(s) _____ dismissed in interest of justice ☐ Violation of probation dismissed
☐ Motion to dismiss remaining count(s) taken under submission ☐ Referred to Probation Department for sentencing report
☐ Time waived ☐ Arbuckle waiver ☐ Given ☐ Declined ☐ O/R Agreement incorporated herein ☐ Jury Trial vacated
☐ Harvey waiver as to Count(s) _____ ☐ Certification incorporated herein ☐ Notice, Sentence, Calendar, Commitment incorporated herein

JUDGMENT/SENTENCE
☐ No legal cause why judgment should not be pronounced ☐ Time waived
☐ Formal arraignment waived ☐ Probation report waived ☐ Probation denied
☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ____ (_____+_____)
☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ____ (_____+_____)
☐ Defendant sentenced to _____ days jail _____ ☐ Concurrent/Consecutive to _____
☐ Defendant to pay fine $ _____ ☐ forthwith ☐ Defendant admitted to probation _____ months ☐ Summary ☐ Formal
☐ Probation reinstated and modified ☐ Probation terminated ☐ Diversion granted
☐ Violation of probation dismissed ☐ Public Defender fees of $ _____ ordered
☐ Remaining count(s) dismissed ☐ Count(s) dismissed _____
☐ Criminal proceedings suspended and defendant to be placed at: ☐ California Rehabilitation Center ☐ _____ State Hospital
☐ Notice, Sentence, Calendar, Commitment ☐ Promise to pay ☐ Order incorporated herein
☐ $ _____ Restitution fine pursuant to § 1202.4(b) P.C. ☐ To be collected by CDC pursuant to §2085.5 P.C.
☐ Restitution fine pursuant to §1202.45 P.C. stayed pending successful completion of parole.

MISCELLANEOUS
☐ No complaint filed ☐ Matter held pending ☐ Notice, Sentence, Commitment incorporated herein ☐ Case dismissed in the interest of justice
☐ Dropped from calendar ☐ Refusal on file ☐ O/R Agreement incorporated herein ☐ Substitution of counsel, Public Defender relieved
☐ Request for dismissal & Order filed ☐ Warrant recalled ☐ Conflict declared, counsel relieved, conflict counsel appointed _____
☐ Motions(s): _____ ☐ Granted ☐ Denied ☐ Continued
☐ _____
☐ _____
☐ _____
☐ _____

00606

CLERK'S DOCKET AND MINUTES

SUPERIOR COURT OF CALIFORNIA, COUNTY OF . ,TER

DEFENDANT (NAME): BRENDLIN, BRUCE EDWARD — CASE NO: CR-F -01-0002703

ARRAIGNMENT — DATE: December 31, 2001

JUDGE: H. TED HANSEN — DEPUTY CLERK: DIANA F. TORRES — COURT REPORTER: Lori Beck

PEOPLE REPRESENTED BY: D. Arnson — DEFENDANT REPRESENTED BY: T. Warriner

☑ DEFENDANT PRESENT ☑ IN CUSTODY ☐ DEFENDANT NOT PRESENT ☐ INTERPRETER SWORN _____ ☐ PROBATION OFFICER _____

FAILURE TO APPEAR:

☐ O/R revoked ☐ Bail forfeited ☐ Warrant ordered, bail $ _____ (Section _____) ☐ Counsel relieved of further representation
☐ Execution stayed to _____ ☐ Trial date of _____ vacated
☐ Stay on warrant dissolved ☐ Legal excuse for nonappearance, order for ☐ Forfeiture ☐ Revocation set aside ☐ Warrant recalled ☐ Order for warrant rescinded
☐ Court Costs imposed $ _____ due by _____ ☐ Bail/O.R. reinstated

ARRAIGNMENT:

☐ Failure to appear ☐ Vjolation of ☐ Probation ☐ Court Order ☑ Information ☐ Complaint ☐ Clerk's arraignment ☐ Citation
☑ In custody ☑ Correct name determined ☐ Arraignment continued to obtain private counsel ☐ Arraignment continued for entry of plea
☐ Complaint amended to ☐ Show correct name _____ ☐ Add count _____
☑ Formal arraignment waived ☐ Charges read ☐ Defendant orally advised of rights ☐ Statement of rights incorporated herein
☐ Time waived C/R release ☐ granted ☐ denied, bail set at $_____ ☐ O/R Agreement incorporated herein ☐ Arraignment continued to obtain license

PLEA OF NOT GUILTY: Warriner

☑ Plea(s) of NOT GUILTY entered ☐ Prior(s) denied ☐ Time waived ☑ Public Defender appointed ☐ Conflict counsel appointed _____
☐ Denial entered ☑ Notice, Sentence, Calendar, Commitment incorporated herein

PRELIMINARY HEARING:

☐ Preliminary Hearing Held/Waived ☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Witness(es) testified: _____ ☐ Certification incorporated herein ☐ Information Filed _____

COURT TRIAL/MOTIONS/VIOLATION OF PROBATION HEARING:

☐ Witness(es) testified: _____
☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Motion(s): _____ ☐ Granted ☐ Denied
☐ Defendant found not guilty/ guilty of _____
☐ Defendant found in violation of probation by _____
☐ Count(s) dismissed _____ ☐ Court's motion ☐ District Attorney's motion ☐ Violation of probation dismissed

CONTINUANCES: 1) Felony PT Set

☐ Notice, Sentence, Calendar, Commitment incorporated herein ☐ Time waived ☐ Jury trial waived/ counsel joins ☐ Hearing continued ☐ Referred for diversion eligibility
☐ Preliminary hearing confirmed _____ ☐ Violation of probation hearing confirmed _____ ☐ Arraignment waived

PLEA OF GUILTY: ☑ Jury Trial/Trial readiness ~~set/reset/confirmed~~

☐ Complaint amended to make count _____ a misdemeanor violation of _____
☐ Complaint amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Information amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Advised of maximum penalties and waived constitutional rights ☐ Entry of plea form incorporated herein
☐ Defendant ☐ Counsel for defendant pleads ☐ Guilty _____ ☐ No Contest _____
☐ Admits prior(s) _____ ☐ Stipulated sentence _____ ☐ No immediate State Prison
☐ Admits violation of ☐ probation ☐ court order by _____
☐ Count(s) _____ dismissed in interest of justice ☐ Violation of probation dismissed
☐ Motion to dismiss remaining count(s) taken under submission ☐ Referred to Probation Department for sentencing report
☐ Time waived ☐ Arbuckle waiver ☐ Given ☐ Declined ☐ O/R Agreement incorporated herein ☐ Jury Trial vacated
☐ Harvey waiver as to Count(s) _____ ☐ Certification incorporated herein ☐ Notice, Sentence, Calendar, Commitment incorporated herein

JUDGMENT/SENTENCE:

☐ No legal cause why judgment should not be pronounced ☐ Time waived
☐ Formal arraignment waived ☐ Probation report waived ☐ Probation denied
☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ___ (_____ + _____)
☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ___ (_____ + _____)
☐ Defendant sentenced to _____ days jail _____ ☐ Concurrent/Consecutive to _____
☐ Defendant to pay fine $ _____ ☐ forthwith ☐ Defendant admitted to probation _____ months ☐ Summary ☐ Formal
☐ Probation reinstated and modified ☐ Probation terminated ☐ Diversion granted
☐ Violation of probation dismissed ☐ Public Defender fees of $ _____ ordered
☐ Remaining count(s) dismissed ☐ Count(s) dismissed _____
☐ Criminal proceedings suspended and defendant to be placed at: ☐ California Rehabilitation Center ☐ _____ State Hospital
☐ Notice, Sentence, Calendar, Commitment ☐ Promise to pay ☐ Order incorporated herein
☐ $ _____ Restitution fine pursuant to § 1202.4(b) P.C. ☐ To be collected by CDC pursuant to §2085.5 P.C.
☐ Restitution fine pursuant to §1202.45 P.C. stayed pending successful completion of parole.

MISCELLANEOUS:

☐ No complaint filed ☐ Matter held pending ☐ Notice, Sentence, Commitment incorporated herein ☐ Case dismissed in the interest of justice
☐ Dropped from calendar ☐ Refusal on file ☐ O/R Agreement incorporated herein ☐ Substitution of counsel, Public Defender relieved
☐ Request for dismissal & Order filed ☐ Warrant recalled ☐ Conflict declared, counsel relieved, conflict counsel appointed _____
☐ Motions(s): _____ ☐ Granted ☐ Denied ☐ Continued
☐ _____
☐ _____
☐ _____
☐ _____

00039

CLERK'S DOCKET AND MINUTES

SUPER COURT OF CALIFORNIA, COUNTY OF S TER

DEFENDANT (NAME): BRENDLIN, BRUCE EDWARD
FELONY PRETRIAL CONF

CASE NO: CR-F -01-0002703
DATE: January 14, 2002

JUDGE: CHRIS CHANDLER DEPUTY CLERK: MARIA CARMONA COURT REPORTER: Laura Blum

PEOPLE REPRESENTED BY: Brian Aronson DEFENDANT REPRESENTED BY: R. Thomas

☐ DEFENDANT PRESENT ☐ IN CUSTODY ☐ DEFENDANT NOT PRESENT ☐ INTERPRETER SWORN _____
☐ PROBATION OFFICER _____

FAILURE TO APPEAR
☐ O/R revoked ☐ Bail forfeited ☐ Warrant ordered, bail $ _____ (Section _____) ☐ Counsel relieved of further representation
☐ Execution stayed to _____ ☐ Trial date of _____ vacated
☐ Stay on warrant dissolved ☐ Legal excuse for nonappearance, order for ☐ Forfeiture ☐ Revocation set aside ☐ Warrant recalled ☐ Order for warrant rescinded
☐ Court Costs imposed $ _____ due by _____ ☐ Bail/O.R. reinstated

ARRAIGNMENT
☐ Failure to appear ☐ Violation of ☐ Probation ☐ Court Order ☐ Information ☐ Complaint ☐ Clerk's arraignment ☐ Citation
☐ In custody ☐ Correct name determined ☐ Arraignment continued to obtain private counsel ☐ Arraignment continued for entry of plea
☐ Complaint amended to ☐ Show correct name _____ ☐ Add count _____
☐ Formal arraignment waived ☐ Charges read ☐ Defendant orally advised of rights ☐ Statement of rights incorporated herein
☐ Time waived O/R release ☐ granted ☐ denied, bail set at $_____ ☐ O/R Agreement incorporated herein ☐ Arraignment continued to obtain license

PLEA OF NOT GUILTY
☐ Plea(s) of NOT GUILTY entered ☐ Prior(s) denied ☐ Time waived ☐ Public Defender appointed ☐ Conflict counsel appointed _____
☐ Denial entered ☐ Notice, Sentence, Calendar, Commitment incorporated herein

PRELIMINARY HEARING
☐ Preliminary Hearing Held/Waived ☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Witness(es) testified: _____ ☐ Certification incorporated herein ☐ Information Filed _____

COURT TRIAL/MOTIONS/VIOLATION OF PROBATION HEARING
☐ Witness(es) testified: _____
☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Motion(s): _____ ☐ Granted ☐ Denied
☐ Defendant found not guilty/ guilty of _____
☐ Defendant found in violation of probation by _____
☐ Count(s) dismissed _____ ☐ Court's motion ☐ District Attorney's motion ☐ Violation of probation dismissed

CONTINUANCES
☐ Notice, Sentence, Calendar, Commitment incorporated herein ☐ Time waived ☐ Jury trial waived/ counsel joins ☐ Hearing continued ☐ Referred for diversion eligibility
☐ Preliminary hearing confirmed _____ ☐ Violation of probation hearing confirmed _____ ☐ Arraignment waived
☐ Jury Trial/Trial readiness set/reset/confirmed

PLEA OF GUILTY
☐ Complaint amended to make count _____ a misdemeanor violation of _____
☐ Complaint amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Information amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Advised of maximum penalties and waived constitutional rights ☐ Entry of plea form incorporated herein
☐ Defendant ☐ Counsel for defendant pleads ☐ Guilty _____ ☐ No Contest _____
☐ Admits prior(s) _____ ☐ Stipulated sentence _____ ☐ No immediate State Prison
☐ Admits violation of ☐ probation ☐ court order by _____
☐ Count(s) _____ dismissed in interest of justice ☐ Violation of probation dismissed
☐ Motion to dismiss remaining count(s) taken under submission ☐ Referred to Probation Department for sentencing report
☐ Time waived ☐ Arbuckle waiver ☐ Given ☐ Declined ☐ O/R Agreement incorporated herein ☐ Jury Trial vacated
☐ Harvey waiver as to Count(s) _____ ☐ Certification incorporated herein ☐ Notice, Sentence, Calendar, Commitment incorporated herein

JUDGMENT/SENTENCE
☐ No legal cause why judgment should not be pronounced ☐ Time waived
☐ Formal arraignment waived ☐ Probation report waived ☐ Probation denied
☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ____ (____+____)
☐ Defendant sentenced to the _____ term of _____ years _____ months in prison on count: _____ CTS ____ (____+____)
☐ Defendant sentenced to _____ days jail _____ ☐ Concurrent/Consecutive to _____
☐ Defendant to pay fine $ _____ ☐ forthwith ☐ Defendant admitted to probation _____ months ☐ Summary ☐ Formal
☐ Probation reinstated and modified ☐ Probation terminated ☐ Diversion granted
☐ Violation of probation dismissed ☐ Public Defender fees of $ _____ ordered
☐ Remaining count(s) dismissed ☐ Count(s) dismissed _____
☐ Criminal proceedings suspended and defendant to be placed at: ☐ California Rehabilitation Center ☐ _____ State Hospital
☐ Notice, Sentence, Calendar, Commitment ☐ Promise to pay ☐ Order incorporated herein
☐ $ _____ Restitution fine pursuant to § 1202.4(b) P.C. ☐ To be collected by CDC pursuant to §2085.5 P.C.
☐ Restitution fine pursuant to §1202.45 P.C. stayed pending successful completion of parole.

MISCELLANEOUS
☐ No complaint filed ☐ Matter held pending ☐ Notice, Sentence, Commitment incorporated herein ☐ Case dismissed in the interest of justice
☐ Dropped from calendar ☐ Refusal on file ☐ O/R Agreement incorporated herein ☐ Substitution of counsel, Public Defender relieved
☐ Request for dismissal & Order filed ☐ Warrant recalled ☐ Conflict declared, counsel relieved, conflict counsel appointed _____
☐ Motions(s): _____ ☐ Granted ☐ Denied ☐ Continued
☐ _____
☐ _____
☐ _____
☐ _____

00041

CLERK'S DOCKET AND MINUTES

SUPE. .R COURT OF CALIFORNIA, COUNTY OF ..JTTER

DEFENDANT (NAME): BRENDLIN, BRUCE EDWARD
1538.5 MOTION

CASE NO: CR-F -01-0002703
DATE: February 8, 2002

JUDGE: Ann Rutherford DEPUTY CLERK: DIANA F. TORRES COURT REPORTER: Kim Durso

PEOPLE REPRESENTED BY: S. Green DEFENDANT REPRESENTED BY: T. Warriner

☑ DEFENDANT PRESENT ☑ IN CUSTODY ☐ DEFENDANT NOT PRESENT ☐ INTERPRETER SWORN _____
☐ PROBATION OFFICER _____

FAILURE TO APPEAR
☐ O/R revoked ☐ Bail forfeited ☐ Warrant ordered, bail $ _____ (Section _____) ☐ Counsel relieved of further representation
☐ Execution stayed to _____ ☐ Trial date of _____ vacated
☐ Stay on warrant dissolved ☐ Legal excuse for nonappearance, order for ☐ Forfeiture ☐ Revocation set aside ☐ Warrant recalled ☐ Order for warrant rescinded
☐ Court Costs imposed $ _____ due by _____ ☐ Bail/O.R. reinstated

ARRAIGNMENT
☐ Failure to appear ☐ Violation of ☐ Probation ☐ Court Order ☐ Information ☐ Complaint ☐ Clerk's arraignment ☐ Citation
☐ In custody ☐ Correct name determined ☐ Arraignment continued to obtain private counsel ☐ Arraignment continued for entry of plea
☐ Complaint amended to ☐ Show correct name _____ ☐ Add count _____
☐ Formal arraignment waived ☐ Charges read ☐ Defendant orally advised of rights ☐ Statement of rights incorporated herein
☐ Time waived O/R release ☐ granted ☐ denied, bail set at $ _____ ☐ O/R Agreement incorporated herein ☐ Arraignment continued to obtain license

PLEA OF NOT GUILTY
☐ Plea(s) of NOT GUILTY entered ☐ Prior(s) denied ☐ Time waived ☐ Public Defender appointed ☐ Conflict counsel appointed _____
☐ Denial entered ☐ Notice, Sentence, Calendar, Commitment incorporated herein

PRELIMINARY HEARING
☐ Preliminary Hearing Held/Waived ☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Witness(es) testified: _____ ☐ Certification incorporated herein ☐ Information Filed _____

COURT TRIAL/MOTION/VIOLATION OF PROBATION HEARING
☑ Witness(es) testified: Robert Charles Bakenhaugh, Clifton Bowman, Sarah Allen Dunn, M. Regan
☑ Exhibit(s) marked: Defendant's A-D, Peoples 1-3 ☑ Admitted: Defendants A-D, Peoples 1-3
☐ Motion(s): _____ ☐ Granted ☐ Denied
☐ Defendant found not guilty/ guilty of _____
☐ Defendant found in violation of probation by _____
☐ Count(s) dismissed _____ ☐ Court's motion ☐ District Attorney's motion ☐ Violation of probation dismissed

CONTINUANCES
☐ Notice, Sentence, Calendar, Commitment incorporated herein ☐ Time waived ☐ Jury trial waived/ counsel joins ☐ Hearing continued ☐ Referred for diversion eligibility
☐ Preliminary hearing confirmed _____ ☐ Violation of probation hearing confirmed _____ ☐ Arraignment waived
☐ Jury Trial/Trial readiness set/reset/confirmed

PLEA OF GUILTY:
☐ Complaint amended to make count _____ a misdemeanor violation of _____
☐ Complaint amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Information amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☐ Advised of maximum penalties and waived constitutional rights ☐ Entry of plea form incorporated herein
☐ Defendant ☐ Counsel for defendant pleads ☐ Guilty _____ ☐ No Contest _____
☐ Admits prior(s) _____ ☐ Stipulated sentence _____ ☐ No immediate State Prison
☐ Admits violation of ☐ probation ☐ court order by _____
☐ Count(s) _____ dismissed in interest of justice ☐ Violation of probation dismissed
☐ Motion to dismiss remaining count(s) taken under submission ☐ Referred to Probation Department for sentencing report
☐ Time waived ☐ Arbuckle waiver ☐ Given ☐ Declined ☐ O/R Agreement incorporated herein ☐ Jury Trial vacated
☐ Harvey waiver as to Count(s) _____ ☐ Certification incorporated herein ☐ Notice, Sentence, Calendar, Commitment incorporated herein

JUDGMENT/SENTENCE
☐ No legal cause why judgment should not be pronounced ☐ Time waived
☐ Formal arraignment waived ☐ Probation report waived ☐ Probation denied
☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ____ (____ + ____)
☐ Defendant sentence to the _____ term of _____ years _____ months in prison on count _____ CTS ____ (____ + ____)
☐ Defendant sentenced to _____ days jail _____ ☐ Concurrent/Consecutive to _____
☐ Defendant to pay fine $ _____ ☐ forthwith ☐ Defendant admitted to probation _____ months ☐ Summary ☐ Formal
☐ Probation reinstated and modified ☐ Probation terminated ☐ Diversion granted
☐ Violation of probation dismissed ☐ Public Defender fees of $ _____ ordered
☐ Remaining count(s) dismissed ☐ Count(s) dismissed _____
☐ Criminal proceedings suspended and defendant to be placed at: ☐ California Rehabilitation Center ☐ _____ State Hospital
☐ Notice, Sentence, Calendar, Commitment ☐ Promise to pay ☐ Order incorporated herein
☐ $ _____ Restitution fine pursuant to § 1202.4(b) P.C. ☐ To be collected by CDC pursuant to §2085.5 P.C.
☐ Restitution fine pursuant to §1202.45 P.C. stayed pending successful completion of parole.

MISCELLANEOUS:
☐ No complaint filed ☐ Matter held pending ☐ Notice, Sentence, Commitment incorporated herein ☐ Case dismissed in the interest of justice
☐ Dropped from calendar ☐ Refusal on file ☐ O/R Agreement incorporated herein ☐ Substitution of counsel, Public Defender relieved
☐ Request for dismissal & Order filed ☐ Warrant recalled ☐ Conflict declared, counsel relieved, conflict counsel appointed _____
☑ Motion(s): Motion to Suppress is argued ☐ Granted ☐ Denied ☐ Continued
☐ and submitted. Parties are Counsel. Motion to suppress is denied. Motion
☐ to Continue jury trial by DA is Heard. To Monday, 2-11-02, @ 1:30 pm.
☐ _____
☐ _____

00085

CLERK'S DOCKET AND MINUTES

SUPERI . COURT OF CALIFORNIA, COUNTY OF S ER

DEFENDANT (NAME): BRENDLIN, BRUCE EDWARD
TRIAL READINESS CONF

CASE NO: CR-F -01-0002703
DATE: February 11, 2002

JUDGE: Chris Chandler DEPUTY CLERK: Maria Lawrence COURT REPORTER: Laura Blum

PEOPLE REPRESENTED BY: Sara Green DEFENDANT REPRESENTED BY: Tim Warriner

☑ DEFENDANT PRESENT ☑ IN CUSTODY ☐ DEFENDANT NOT PRESENT ☐ INTERPRETER SWORN ☐ PROBATION OFFICER

FAILURE TO APPEAR:
☐ O/R revoked ☐ Bail forfeited ☐ Warrant ordered, bail $ _____ (Section _____) ☐ Counsel relieved of further representation
☐ Execution stayed to _____ ☐ Trial date of _____ vacated
☐ Stay on warrant dissolved ☐ Legal excuse for nonappearance, order for ☐ Forfeiture ☐ Revocation set aside ☐ Warrant recalled ☐ Order for warrant rescinded
☐ Court Costs imposed $ _____ due by _____ ☐ Bail/O.R. reinstated

ARRAIGNMENT
☐ Failure to appear ☐ Violation of ☐ Probation ☐ Court Order ☐ Information ☐ Complaint ☐ Clerk's arraignment ☐ Citation
☐ In custody ☐ Correct name determined ☐ Arraignment continued to obtain private counsel ☐ Arraignment continued for entry of plea
☐ Complaint amended to ☐ Show correct name _____ ☐ Add count _____
☐ Formal arraignment waived ☐ Charges read ☐ Defendant orally advised of rights ☐ Statement of rights incorporated herein
☐ Time waived O/R release ☐ granted ☐ denied, bail set at $_____ ☐ O/R Agreement incorporated herein ☐ Arraignment continued to obtain license

PLEA OF NOT GUILTY:
☐ Plea(s) of NOT GUILTY entered ☐ Prior(s) denied ☐ Time waived ☐ Public Defender appointed ☐ Conflict counsel appointed _____
☐ Denial entered ☐ Notice, Sentence, Calendar, Commitment incorporated herein

PRELIMINARY HEARING
☐ Preliminary Hearing Held/Waived ☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Witness(es) testified: _____ ☐ Certification incorporated herein ☐ Information Filed _____

COURT TRIAL/MOTIONS/VIOLATION OF PROBATION HEARING
☐ Witness(es) testified: _____
☐ Exhibit(s) marked: _____ ☐ Admitted: _____
☐ Motion(s): _____ ☐ Granted ☐ Denied
☐ Defendant found not guilty/ guilty of _____
☐ Defendant found in violation of probation by _____
☐ Count(s) dismissed _____ ☐ Court's motion ☐ District Attorney's motion ☐ Violation of probation dismissed

CONTINUANCES
☐ Notice, Sentence, Calendar, Commitment incorporated herein ☐ Time waived ☑ Jury trial waived/ counsel joins ☐ Hearing continued ☐ Referred for diversion eligibility
☐ Preliminary hearing confirmed _____ ☐ Violation of probation hearing confirmed _____ ☐ Arraignment waived
☐ Jury Trial/Trial readiness set/reset/confirmed

PLEA OF GUILTY
☐ Complaint amended to make count _____ a misdemeanor violation of _____
☐ Complaint amended to add/make count _____ a violation of _____ ☐ Arraignment waived
☑ Information amended to add/make count (one CT) a violation of 666/7.5(b)PC (Prison Prior) ☐ Arraignment waived
☑ Advised of maximum penalties and waived constitutional rights ☐ Entry of plea form incorporated herein
☑ Defendant ☐ Counsel for defendant pleads ☑ Guilty 11378.66)H&S 667.5(b)PC ☐ No Contest _____
☐ Admits prior(s) _____ ☐ Stipulated sentence _____ ☐ No immediate State Prison
☐ Admits violation of ☐ probation ☐ court order by _____
☑ Count(s) remaining as to this defendant only are ☐ dismissed in interest of justice ☐ Violation of probation dismissed
☐ Motion to dismiss remaining count(s) taken under submission ☐ Referred to Probation Department for sentencing report
☐ Time waived ☐ Arbuckle waiver ☐ Given ☐ Declined ☐ O/R Agreement incorporated herein ☐ Jury Trial vacated
☐ Harvey waiver as to Count(s) _____ ☐ Certification incorporated herein ☐ Notice, Sentence, Calendar, Commitment incorporated herein

JUDGMENT/SENTENCE
Total 4 years; term to run concurrent to any parole violation
☑ No legal cause why judgment should not be pronounced ☑ Time waived
☑ Formal arraignment waived ☑ Probation report waived ☐ Probation denied
☑ Defendant sentence to the Upper term of 3 years ____ months in prison on count 1 CTS 115 (77 + 88)
☑ Defendant sentence to the Upper term of 1 years ____ months in prison on count ____ CTS ____ (____ + ____)
☐ Defendant sentenced to _____ days jail _____ ☑ Concurrent ☐ Consecutive to CT 1
☐ Defendant to pay fine $ _____ ☐ forthwith ☐ Defendant admitted to probation _____ months ☐ Summary ☐ Formal
☐ Probation reinstated and modified ☐ Probation terminated ☐ Diversion granted 667.5(b)PC
☐ Violation of probation dismissed ☐ Public Defender fees of $ _____ ordered
☐ Remaining count(s) dismissed ☐ Count(s) dismissed _____
☐ Criminal proceedings suspended and defendant to be placed at: ☐ California Rehabilitation Center ☐ _____ State Hospital
☐ Notice, Sentence, Calendar, Commitment ☐ Promise to pay ☐ Order incorporated herein
☑ $ 200 Restitution fine pursuant to § 1202.4(b) P.C. ☐ To be collected by CDC pursuant to §2085.5 P.C.
☑ Restitution fine pursuant to §1202.45 P.C. stayed pending successful completion of parole.

MISCELLANEOUS:
☐ No complaint filed ☐ Matter held pending ☐ Notice, Sentence, Commitment incorporated herein ☐ Case dismissed in the interest of justice
☐ Dropped from calendar ☐ Refusal on file ☐ O/R Agreement incorporated herein ☐ Substitution of counsel, Public Defender relieved
☐ Request for dismissal & Order filed ☐ Warrant recalled ☐ Conflict declared, counsel relieved, conflict counsel appointed _____
☐ Motion(s): _____ ☐ Granted ☐ Denied ☐ Continued
☑ Advised of Appeal Rights
☐ _____
☐ _____
☐ _____

00088

CALIFORNIA APPELLATE COURTS
3rd Appellate District

Case Number C040754

THE PEOPLE,
Plaintiff and Respondent,
v.

BRUCE EDWARD BRENDLIN,
Defendant and Appellant.

DOCKET ENTRIES

Date	Description	Notes
03/28/2002	Notice of appeal lodged/received (criminal).	Filed in superior court on 03/15/02. Manufacture of methamphetamine.
04/05/2002	Record on appeal filed.	1 VOL. CT (91 pgs.); 1 VOL. RT (85 pgs.) Probation report waived. AOB DUE: 05/15/02.
04/24/2002	Appointment/recommendation req. for counsel filed.	
04/25/2002	Counsel appointment order filed.	Attorney James Johnson for appellant. AOB DUE: 05/28/02
05/23/2002	Filed application and order of:	appellant to 06/27/02.
07/01/2002	Appellant's opening brief.	Attorney: Johnson, James Party: Brendlin, Bruce

Date	Description	Notes
07/31/2002	Filed application and order of:	respondent to 08/30/02.
08/12/2002	Received copy of	amended abstract correcting sentencing credits.
08/29/2002	Filed application and order of:	respondent to 09/30/02.
09/27/2002	Granted-extension of time.	Respondent to 10/29/02. No further time.
11/01/2002	Respondent notified pursuant to rule 17(a)(2) or 37(b).	Attorney: Office of the State Attorney General Party: The People Brief due: 12/02/02.
11/27/2002	Respondent's brief.	Attorney: Office of the State Attorney General Party: The People
12/16/2002	Appellant's reply brief.	Attorney: Johnson, James Party: Brendlin, Bruce
12/16/2002	Case fully briefed.	
01/06/2004	Oral argument waiver notice sent.	Request due: 01/16/04
01/27/2004	Cause submitted after approval of argument waiver.	SCOTLAND, P.J.
01/27/2004	Opinion filed.	The judgment is reversed. Review granted in Supreme Court.

Date	Description	Notes
02/03/2004	Rehearing petition filed.	by respondent. DUE: 02/26/04
02/05/2004	Order denying rehearing petition filed	SCOTLAND, P.J. (BRo)
03/05/2004	Service copy of petition for review received.	Respondent People's.
03/08/2004	Service copy of petition for review received.	Respondent's.
03/05/2004	Petition for review filed in Supreme Court.	By Respondent in San Francisco.
03/22/2004	Record transmitted to Supreme Court.	1 Vol.
04/14/2004	Petition for review granted in Supreme Court.	GEORGE, J., KENNARD, J., BAXTER, J., WERDEGAR, J., CHIN, J., BROWN, J., MORENO, J.
09/08/2004	Answer to petition for review received	Appellant's
10/14/2004	Received copy of Supreme Court filing.	Respondent's reply brief.

Date	Description	Notes
07/10/2006	Received copy of	Appellant's petition for rehearing in the Supreme Court (S123133).
07/19/2006	Received copy of Supreme Court filing.	Application of Matthew Gordon Lamont for leave to file an amicus curiae brief in support of appellant Brendlin's petition for rehearing.
07/19/2006	Received copy of Supreme Court filing.	Corrected application of Matthew Gordon Lamont for leave to file amicus curiae brief in support of appellant Brendlin's petition for rehearing.
07/19/2006	Received copy of Supreme Court filing.	Amicus curiae brief of Matthew Gordon Lamont in support of appellant Brendlin's petition for rehearing.
08/30/2006	Received:	copy of petition for rehearing denied in Supreme Court. Werdegar, Moreno, and Corrigan, JJ., are of the opinion the petition should be granted. GEORGE, C.J.
09/01/2006	Remittitur received from Supreme Court.	2 certified copies of the opinion filed 06/29/06, and 2 copies of the remittitur issued 08/30/06, reversing this court's decision.

Date	Description	Notes
09/07/2006	Filed:	original remittitur with opinion of the Supreme Court.
09/11/2006	Remittitur issued.	With certified copy of the Supreme Court opinion and Supreme Court remittitur.
09/11/2006	Case complete.	
09/18/2006	Court's correspondence returned.	Appellant's copy of Supreme Court remittitur, marked "Return to sender, discharged". Placed in file.
11/29/2006	Received copy of	Petition for writ of certiorari for filing in U.S. Supreme Court.

CALIFORNIA APPELLATE COURTS
Supreme Court

Case Number S123133

THE PEOPLE,
Pkaintiff and Respondent,
v.

BRUCE EDWARD BRENDLIN,
Defendant and Appellant.

DOCKET ENTRIES

Date	Description	Notes
03/05/2004	Petition for review filed	In Sacramento by counsel for Respondent (The People).
03/08/2004	Record requested	
03/23/2004	Received Court of Appeal record	one doghouse
04/14/2004	Petition for review granted (criminal case)	Votes: George, Kennard, Baxter, Werdegar, Chin, Brown and Moreno, JJ.
04/20/2004	Request for extension of time filed	(in Sacramento) by respondent (People) for a 28-day extension to and including June 11, 2004 to file the opening brief on the merits.

Date	Description	Notes
04/26/2004	Extension of time granted	On application of respondent and good cause appearing, it is ordered that the time to serve and file Respondent's Opening Brief on the Merits is extended to and including June 11, 2004.
05/12/2004	Issues ordered limited	The issues to be briefed and argued in this case are the following: (1) Was defendant, as a passenger in a vehicle subjected to a traffic stop, thereby "detained" for purposes of the Fourth Amendment, thus allowing him to contest the legality of the stop? (2) Could the vehicle be stopped on reasonable suspicion that it was being operated while unregistered, in violation of the Vehicle Code, when it exhibited an expired license plate registration tag, but also displayed what appeared from a distance to be a current temporary registration permit?
05/17/2004	Received:	
05/19/2004	Request for extension of time filed	to July 9, 2004, to file respondent's opening brief on the merits. (Second request filed in Sacramento)

Date	Description	Notes
05/25/2004	Extension of time granted	On application of respondent and good cause appearing, it is ordered that the time to serve and file Respondent's Opening Brief on the Merits is extended to and including July 9, 2004. No further extensions of time are contemplated.
05/27/2004	Counsel appointment order filed	Upon request of appellant for appointment of counsel, the Central California Appellate Program is hereby appointed to represent appellant on his appeal now pending in this court. Appellant's brief on the merits shall be served and filed on or before thirty (30) days from the date respondent's opening brief on the merits is filed.
07/09/2004	Opening brief on the merits filed	(in Sacramento) by respondent
08/09/2004	Request for extension of time filed	(in Sacramento) for an e.o.t. to 9-8-2004, to file appellant's answer brief/ merits. 30-day extension granted as requested. No further extensions of time are contemplated.

Date	Description	Notes
08/13/2004	Extension of time granted	On application of appellant and good cause appearing, it is ordered that the time to serve and file the answer brief on the merits is extended to and including September 8, 2004. No further extensions of time are contemplated.
09/08/2004	Answer brief on the merits filed	(in Sacramento) by appellant (Brendlin)
09/21/2004	Request for extension of time filed	by respondent (the People) to file the reply brief on the merits asking to Oct. 18, 2004
09/28/2004	Extension of time granted	to 10-18-04 for resp to file the reply brief on the merits. No further extensions of time are contemplated.
10/13/2004	Reply brief filed (case fully briefed)	by resp
01/12/2005	Compensation awarded counsel	Atty Campbell
03/08/2006	Case ordered on calendar	Wednesday, April 5, 2006, at 9:00 a.m., in Los Angeles
04/05/2006	Cause argued and submitted	

Date	Description	Notes
06/29/2006	Opinion filed: Judgment reversed	Judgment of the Court of Appeal. Opinion by Baxter, J.—joined by George, C.J., Kennard, Chin, JJ.
		Dissenting Opinion by Corrigan, J.—joined by Werdegar and Moreno, JJ.
07/11/2006	Rehearing petition filed	Bruce Brendlin, appellant, by Elizabeth Campbell, Staff Attorney, Central California Appellant Program.
07/12/2006	Time extended to consider modification or rehearing	to and including September 27, 2006, or the date upon which rehearing is either granted or denied, whichever occurs first.
07/17/2006	Received:	Application to file amicus curiae brief of Matthew Gordon Lamont [appellant in pending case No. S131308, People v Lamont] in support of petition for rehearing (Brendlin's) [brief separate]

Date	Description	Notes
07/24/2006	Application denied	The application of Matthew Gordon Lamont for leave to file amicus curiae brief in support of appellant's petition for rehearing is hereby denied. [Original returned to Attorney Edward A. Hoffman with a copy of the order.]
07/24/2006	Received:	
08/30/2006	Rehearing denied	Werdegar, Moreno, and Corrigan, JJ., are of the opinion the petition should be granted.
08/30/2006	Remittitur issued (criminal case)	
09/07/2006	Received:	Receipt for remittitur from Third Appellate District, signed for by Theresa Devine, Deputy Clerk.
11/30/2006	Received:	Copy of Petition for Writ of Certiorari filed in the Supreme Court of the United States
12/08/2006	Received:	U.S.S.C. letter dated 12-4-2006, writ of certiorari filed 11-28-2006, placed on the docket 12-4-2006 as No. 06-8120.

Date	Description	Notes
01/29/2007	Received:	Supreme Court of the United States letter dated January 19, 2007, motion of petitioner for leave to proceed in forma pauperis and the petition for writ of certiorari are granted.
01/31/2007	Received:	From Central C.A.P. a copy of request for appointment of counsel in the Supreme Court of the United States case No. 06-8120.
02/14/2007	Received:	letter from the Clerk of the United States Supreme dated February 9, 2007, requesting that the entire record be transmitted to their court.
02/15/2007	Note:	Record sent to United States Supreme Court pursuant to letter from the Clerk dated February 9, 2007. 1 doghouse sent via UPS overnight.

IN THE APPELLATE COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

- 3 Crim
Sutter County
No. CRF-01-2703

PEOPLE OF THE STATE OF CALIFORNIA,
Respondent,

- VS -

BRUCE EDWARD BRENDLIN,
Appellant.

REPORTERS' TRANSCRIPT ON APPEAL
Appeal in the above-entitled matter
Superior Court of the State of California,
in and for the County of Sutter,
Honorable H. TED HANSEN, Judge
Honorable ANN RUTHERFORD, Judge
Honorable CHRIS CHANDLER, Judge

VOLUME ONE OF ONE

COUNSEL

For the Respondent: HONORABLE BILL LOCKYER
Attorney General of the
State of California
1300 I Street
Sacramento, California 95814

For the Appellant: IN PROPRIA PERSONA

COURT REPORTERS
Lori Beck, CSR No. 6565
Kimberly E. Durso, CSR No. 11372
Laura Blum, CSR No. 6093

IN THE APPELLATE COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

COURT REPORTERS TRANSCRIPT ON APPEAL

VOLUME ONE

Monday, December 31, 2001
Monday, January 14, 2002
Friday, February 8, 2002
Monday, February 11, 2002

VOLUME ONE
(Pages 1 through 85)

Monday, December 31, 2001
Monday, January 14, 2002
Friday, February 8, 2002
Monday, February 11, 2002

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Friday, February 8, 2002

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[1] MONDAY, DECEMBER 31, 2001

The matter of the People of the State of California, Plaintiff, versus BRUCE EDWARD BRENDLIN, Defendant, No. CRF-01-2703, came on regularly this day before the Honorable H. TED HANSEN, judge of the Superior Court of California, county of Sutter, Courtroom 2.

The People were present represented by BRIAN ARONSON, Deputy District Attorney of Sutter County.

The Defendant, BRUCE EDWARD BRENDLIN, was present and represented by TIMOTHY WARRINER, Deputy Public Defender.

The following proceedings were then had:

THE COURT: The court will call the case of the People of the state of California versus Karen Simeroth and Bruce Brendlin. This is case CRF-01-2703. Both defendants are present in court. With them are their attorneys. With Mr. Brendlin, the public defender, Mr. Warriner, and with Miss Simeroth Norman Hansen, and the people are represented by Brian Aronson of the district attorney's office. This is the time and place set for arraignment on an Information which has been filed by the people.

Mr. Brendlin and Miss Simeroth we're handing to you an endorsed filed copy of the Information. Would each of you look at that and tell me if your name is correctly stated and spelled, Miss Simeroth?

DEFENDANT: Yes., sir.

THE COURT: And Mr. Brendlin?

[2] DEFENDANT BRENDLIN: Yes.

THE COURT: Thank you. The court will appoint the public defender to represent Mr. Brendlin, and the court will appoint a conflict attorney, Mr. Hansen, to represent Miss Simeroth and both are present for that purpose.

Counsel, do you acknowledge receipt of an endorsed filed copy of the Information, waive full reading thereof, formal arraignment thereon, and full advisement of rights?

MR. HANSEN: Yes, Your Honor.

MR. WARRINER: Yes.

THE COURT: Thank you. Do you wish to have not guilty pleas entered to the counts charged against your client, and as to Mr. Brendlin denials of the alleged prior prison terms, Mr. Hansen?

MR. HANSEN: Yes, Your Honor.

THE COURT: And Mr. Warriner?

MR. WARRINER: Yes.

THE COURT: Thank you. Miss Simeroth and Mr. Brendlin, you have a right to be brought to trial within 60 days of the date the Information was filed. It was filed on December 21st. That means you have a right to have your trial begin not later than February 13, 2002.

Do you understand that, Miss Simeroth?

THE DEFENDANT: Yes, sir,

THE COURT: And Mr. Brendlin?

DEFENDANT BRENDLIN: Yes, I do.

THE COURT: Counsel, what date do you suggest?

MR. WARRINER: Well, we just set the last case on [3] February 13, but I'm going to suggest that we double set these cases. Both Mr. Hansen and I have another trial on that date, but I think it'll workout.

THE COURT: We can do that or we could set it on the 5th. I don't believe either of the two of you have a trial on February 5th. At least in this county anyway.

MR. WARRINER: I do have a trial. Mr. Tibbitts was handling that. It's really my case and I'm going to be doing that trial.

THE COURT: All right. That was not on the calendar with you. I had Mr. Tibbitts, so I'll change that.

Is that agreeable with you, Mr. Hansen, to go with the double set on the 13th?

MR. HANSEN: Yes.

THE COURT: All right. Then this case will be set for trial to begin on February 13, 2002 at 9:00 a.m., counsel in chambers at 8:30, trial readiness conference on February 11, 2002 at 1:30, and pretrial on, counsel, do you have a preference between the 14th or the 22nd of January?

MR. HANSEN: I don't care.

THE COURT: Mr. Warriner?

MR. WARRINER: January 14th.

THE COURT: Pretrial then will be set for January 14th, 2002 at 1:30. Both defendants are ordered present in court on each of those dates and times, and each will remain in custody with bail of 200,000. Thank you.

(End of Proceedings)

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[4] MONDAY, JANUARY 14, 2002

The matter of the People of the State of California versus Bruce Edward Brendlin, Defendant, Case Number CRF-01-2703, came on regularly before the Honorable Chris Chand-

ler, Judge of the Superior and Municipal Court, for the County of Sutter, State of California, sitting in Department Three.

The People were represented by Brian Aronson, Deputy District Attorney.

The Defendant, Bruce Edward Brendlin, was personally present and represented by Richard Thomas, Deputy Public Defender, acting as his counsel.

The following proceedings were then had:

THE COURT: All right. The trial dates for People versus Bruce Edward Brendlin are confirmed. Trial readiness conference dates are confirmed.

No further pretrials requested?

MR. THOMAS: Correct, your Honor.

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[5] FRIDAY, FEBRUARY 8, 2002

In the matter of the People of the State of California versus Bruce Edward Brendlin, Defendant, Case Number CRF-01-2703, came on regularly before the Honorable Ann Rutherford, Judge of the Superior and Municipal Court, for the County of Sutter, State of California, sitting in Department Two.

The People were represented by Susan Green, Deputy District Attorney.

The Defendant, Bruce Edward Brendlin, was personally present and represented by Timothy Warriner, Deputy Public Defender, acting as his counsel.

The following proceedings were then had:

THE COURT: The Court at this time is calling CRF-01-2703; and that is the matter of People versus Simeroth and Brendlin.

Mr. Brendlin, that is Bruce Edward Brendlin, is present with his counsel, Tim Warriner. Karen Sue Simeroth is present with her attorney, Mr. Hansen. And Ms. Green is appearing for the People.

Looks like—I got this file transferred over to me at the lunch break, and I had the opportunity to take it with me and read the motion at lunch. We have a motion to supress and the People's motion to continue the jury trial which is set for the 13th. What I have is I have Mr. Warriner for Mr. Brendlin with a motion to supress.

I don't have a motion to supress from Mr. Hansen on behalf of Ms. Simeroth; is that correct?

[6] MR. HANSEN: It is my intention to move to join in.

THE COURT: To join in. Okay.

Do you want to take up the motion to continue first?

MS. GREEN: No.

THE COURT: You want to take up the motion to supress first?

MS. GREEN: Yes; although, I do have an objection to his joining, because the People haven't been given notice.

If we get to the point where we're going to litigate the traffic stop, I don't have a problem with him joining at that time. It's my understanding that's all he's joining on.

I'm not objecting to the cavity search of Ms. Simeroth; but my objection stands until and unless we get to the point where we litigate the traffic stop.

THE COURT: Okay. Is what you're interested in the traffic stop?

MR. HANSEN: Yes.

THE COURT: Number one, can we all stipulate that there was no search warrant?

MS. GREEN: There was no search warrant.

THE COURT: So we can stipulate to that?

MS. GREEN: Yes.

THE COURT: We don't have to put on evidence there was no search warrant?

Ms. GREEN: Yes. There was an arrest warrant—

THE COURT: I understand that.

Ms. GREEN: Okay.

THE COURT: At least I expect I will understand that, let's put that it way.

[7] Next on the list we have an objection to standing on behalf of your client, Mr. Warriner. You have a list of items you want supressed. And the People require that you put on some evidence of your right of privacy and are interested in the items.

MR. WARRINER: I think there's no search warrant. I think it's the People's burden at this point to justify the search where there is no warrant. So I think that is the People's burden.

And if the Court—in terms of standing, one, we have one defendant who's joined in on the standing issue, so I think it becomes a moot point at this point.

In any event, there are cases that support I do have standing. None of these cases are Third District cases; I checked all of them. There's no case from the Third District that says that I have standing. There's no case from the Third District that says I don't have standing. People versus Bell

says I have standing. People versus Grant says I have standing, and People versus Lineburger, the Nineth [sic] Circuit, concludes I have standing.

THE COURT: You don't want to rely on the Nineth [sic] Circuit.

MR. WARRINER: Well, we won't talk about that too much. Well, the one that counts says I do have standing. Ms. Green, she found Cartwright.

THE COURT: How do you supress something you have no interest in?

MR. WARRINER: Well, People versus Bell and Grant and Lineburger say that the passenger in a vehicle, when there's a traffic stop made that is not supported by probable cause, they [8] say that the passenger has sufficient interest to move to supress the evidence.

THE COURT: Supress the stop?

MR. WARRINER: Yes.

THE COURT: Which case are you relying on?

MR. WARRINER: People versus Bell, People versus Grant—

THE COURT: Which page are you on?

MR. WARRINER: This is on the People's response. The People point this out on Page 4 and 5, that Cartwright supports that standing is not always a sure thing when it comes to another passenger. But the People agree that there are other California cases, People versus Bell, Grant and Lineburger that definitely say passengers do have standing.

THE COURT: Only if they're detained.

MR. WARRINER: No; Bell, Grant and Lineburger say passengers have standing if there is a traffic stop without sufficient probable cause.

THE COURT: Ms. Green.

MS. GREEN: He's talking about two different issues. Those cases which he's referring to are talking about the stop. And what the most recent California case says is, a passenger in a car—which relies on a United States Supreme Court case—

THE COURT: There's a very recent case as I recall.

MS. GREEN: Right.—is not detained. And that's an issue, about do we have search issues. Nothing was found on his person. So the issue about whether or not he was detained from the stop is different as to whether or not he has standing to suppress anything found in the car, because nothing was found on [9] him. He doesn't have, the People's position, any standing to supress the lab that was found in the car because he's a passenger.

Also, because he's a passenger, he can't claim he was detained until the officers exerted some force to, you know—actually, in this case, ordering him out at gunpoint. At that point it wasn't a detention; it was an arrest from the time that they contact him.

MR. WARRINER: I think that Ms. Green is confusing the issues. People versus Bell, Grant and Lineburger say when a passenger in a vehicle is pulled over and there's no probable cause, that person is seized, their body is being seized by the police, okay. And those cases say that a passenger—

THE COURT: I think there are cases that say he can get out—

MR. WARRINER: Well—

THE COURT: He can walk away. The door was open; he could have walked.

MR. WARRINER: Well—

THE COURT: Until the officer said "Stop," he wasn't seized.

MR. WARRINER: He didn't have any choice.

THE COURT: Of course he did; he could have walked away.

MR. WARRINER: Well, Your Honor, Bell, Grant and Lineburger don't hold that way.

THE COURT: Anyway—

MR. WARRINER: Cartwright—

THE COURT: The other problem that I'm trying to get to, you're trying to supress these items that are listed on your [10] motion—

MR. WARRINER: Uh-huh.

THE COURT: —but I don't know what interest you have in them.

MR. WARRINER: I am objecting—my objection is that this should not have been a stopped vehicle in the first place, because there was no probable cause. So whatever was found after that is the fruit of the poisonous tree.

THE COURT: I must be missing something. I think you have to put on evidence that you have an interest in the things you wish to supress, as to your client.

MR. WARRINER: He has—my client has an interest in not being seized, not being pulled over by the police.

THE COURT: That's to supress his arrest.

MR. WARRINER: No, that's to supress the traffic stop of the vehicle. If there was no stop, there can't be any arrest, there can't be any evidence, because the vehicle would have gone on about its business. So I think everything hinges on the validity this traffic stop.

THE COURT: Do you want to go ahead and let him get to the traffic stop and see where it goes from there?

MS. GREEN: First I would like a ruling that his client was not detained as a result of the traffic stop because he was a passenger.

THE COURT: I'd have to hear some evidence to know he wasn't detained. As I understand it, I don't think he was detained until the officer pulled the gun and also said, "You're under arrest, I abscond you."

[11] MS. GREEN: I'm not going to—with him before I'm required to put on any evidence.

MR. WARRINER: She just stipulated, and I'll ask the Court to take judicial notice—

THE COURT: She stipulated there was no search warrant. She did not stipulate there was no arrest warrant.

MR. WARRINER: I obviously want to put on evidence. I think it's the prosecutor's burden to put on evidence. But the Court understands where I'm coming from, and we have a slightly different take on it.

THE COURT: I'll just tell the People to call their first witness.

MS. GREEN: Okay.

THE COURT: We'll determine when he got seized.

MS. GREEN: And my objection—

THE COURT: I'm going to hold your objection, pending to ruling.

MS. GREEN: Thank you.

THE COURT: I'll listen to the testimony and I'll make a finding as to if he was seized if ever and as to what—

MS. GREEN: Okay. We would call Deputy Brokenbrough.

THE COURT: Thank you, Ms. Green.

OFFICER ROBERT BROKENBROUGH,

a witness called by the People, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MS. GREEN:

[12] Q. Would you state your full name and spell your last name for the record.

A. Robert Charles Brokenbrough, B-R-O-K-E-N-B-R-O-U-G-H.

Q. What is your occupation, sir?

A. Deputy sheriff.

Q. For Sutter County?

A. Correct.

Q. Were you working on November 27th of 2001?

A. Yes, I was.

Q. Do you recall where you were at approximately 1:40 a.m.?

A. Yes.

Q. Where were you?

A. Would have been on Franklin, right around south Barrette.

Q. Okay. Were you traveling with anybody—or were you in a patrol car?

A. Yes, I was.

Q. Was anyone else with you?

A. Yes.

Q. Who was with you?

A. That would have been Cadet Janessa Taber.

Q. And at some point around that time was your attention drawn to a 1993 brown Buick Regal?

A. Yes, it was.

Q. Would you tell me about that, please?

A. Yes. The vehicle was also traveling in front of me. It was eastbound on Franklin. I saw that the registration had expired as of November; and in addition, there was also a temporary DMV sticker in the window.

[13] Q. When you said that the registration had expired, what exactly were you looking at on the vehicle to come to that conclusion?

A. The tab on and the year on the license plate itself.

Q. There was a month tab?

A. Yes.

Q. Do you recall what year the month was for?

A. Nine.

Q. Would that relate to the month of September?

A. Yes.

Q. Was there a year on the vehicle?

A. Yes.

Q. What year tab was there?

A. It was red and it was 01.

Q. Okay; and that would relate to 2001?

A. Correct.

Q. Then you had indicated that you saw something in the window?

A. Yes.

Q. What did you see in the window?

A. A paper, a red-colored temporary sticker in the window.

Q. Okay. Are you familiar with the item you saw in the window?

A. Yes.

Q. And what did you think it was?

A. I'm sorry; can you—

Q. Did you know what the item was or did you think it was something?

A. Yes; it's a temporary sticker from DMV.

Q. And was there a number reflected on that sticker?

[14] A. Yes, there was.

Q. And what was it?
A. 11, for November.
Q. Does that correspond to a particular month?
A. Yes.
Q. Was that November?
A. Yes.
Q. What did you do after observing these two things on the vehicle?
A. Made a traffic stop on the vehicle for the vehicle being expired.
Q. When you made the traffic stop did the vehicle stop?
A. Yes.
Q. Did you get out of your car?
A. Yes.
Q. Did you approach the vehicle?
A. Yes.
Q. What side did you approach?
A. On the driver's side.
Q. Did you contact the driver?
A. I did.
Q. Who was the driver?
A. A female, Karen Simeroth.
Q Do you see that person in the courtroom today?
A. I do.
Q. Would you please point her out and describe what she's wearing and where she is sitting.
A. She's sitting in the jury box, left of her attorney, wearing [15] the orange sweater and striped pants.

THE COURT: The record will reflect Ms. Simeroth has been identified.

MS. GREEN: Thank you, Your Honor.

Q. Did you notice whether or not there was anyone else in the vehicle besides Ms. Simeroth?
A. Yes.
Q. Was there another person?

A. Yes.

Q. How many others?

A. One other person.

Q. Where was that person?

A. Sitting in the passenger seat.

Q. Did you recognize that person?

A. Yes.

Q. Okay. How did you recognize him?

A. I knew that it was either Scott or Bruce Brendlin from prior arrests or contact that I've had.

Q. Okay. When you spoke with Ms. Simeroth, did you ask her for any type of identification?

A. I did.

Q. What did you ask for?

A. I asked for her driver's license.

Q. Did she provide that to you?

A. Yes, she did.

Q. While you were speaking with Ms. Simeroth, did you have a conversation with the front passenger?

A. Yes.

[16] Q. What did you talk to him about?

A. I asked the passenger to identify himself, and he verbally identified himself as Bruce Brown.

Q. Did he provide you with any type of ID?

A. No.

Q. Do you see the person, this passenger, here today?

A. Yes.

Q. Would you please point him out, describe what he's wearing and where he's sitting?

A. Sitting at the defense table next to his attorney, wearing the orange sweater and striped pants.

THE COURT: The record will reflect Mr. Brendlin has been identified.

MS. GREEN: Thank you.

Q. After you had received Ms. Simeroth's driver's license, what did you do?

A. I put Bruce Brendlin's name over the radio, and I was aware that one of the Brendlin brothers was a parolee at large. Ultimately Officer Baker of the Yuba City Police Department responded back that he believed Brendlin was a parolee at large and was absconding.

Q. And did your dispatch do anything in relation to the name Bruce Brendlin?

A. Yes; I contacted my dispatch and gave them the name Bruce Brendlin, had them check, and immediately they confirmed that Bruce Brendlin was a parolee at large.

Q. Did you also have dispatch check anything with Simeroth?

A. Yes.

[17] Q. What did you have them do with regard to her?

A. Had them check to see if she had a valid license as well as any warrants.

Q. Now, how soon after you contacted Ms. Simeroth in the driver seat did you call to have them check on a warrant for Mr. Brendlin or—

A. Would have been one to two minutes.

Q. Okay. How long after you called dispatch with this request did Brian Baker, the Yuba City police officer, call you back on the radio?

A. As soon as he heard me identify the passenger, he immediately responded that Bruce Brendlin was a parolee at large.

Q. And how long did it take for dispatch to confirm the warrants for you?

A. I would say right around a minute.

Q. During the time that you were waiting for the warrant to be confirmed, did you observe anything with respect to the car doors?

A. Yes.

Q. What did you observe?

A The passenger door opened and then immediately shut.

Q. Was this a two-door car?

A. Yes.

Q. Okay. After you received confirmation from dispatch that there was a warrant for Mr. Brendlin, what did you do?

A. Prior to that—I requested back up at that point, and Deputy Ramos arrived, and Bruce Brendlin was taken into custody at gunpoint.

[18] Q. Describe for me what you did exactly, please?

A. Withdrew my duty weapon, stood by the passenger door of my patrol car, pointed it in the direction of Bruce Brendlin, and verbally ordered him out of the car at gunpoint.

Q. And was that the first time you issued a command to him during the entire traffic stop?

A. Yes.

Q. Okay. Did you have any other conversation with him prior to that other than asking him what his name was?

A. No.

MS. GREEN: Your Honor, did you want me to just proceed through the rest of the hearing?

THE COURT: I guess so.

MS. GREEN: Okay.

THE COURT: Because to rule on one specific issue as we went, I'd have to do cross-examination.

MS. GREEN: Okay.

Q. You order him out of the car at gunpoint. Where does he—where do you take him after that?

A. I immediately arrest him and place him in the back seat of the patrol car.

Q. Okay. After you place Mr. Brendlin in the back of the patrol car, what do you do?

A. Do a search incident to the arrest on Mr. Brendlin.

Q. Okay. You searched his person?

A. Yes.

Q. Did you find anything on his person?

A. Yes.

[19] Q. What did you find?

A. Located an orange syringe cap.

Q. I want to jump back in time for a second.

During the time you were speaking with Ms. Simcroth at the driver side door, did you notice anything in the car that—inside the car that peaked your interest?

A. Yes.

Q. What was that?

A. There was one or two containers of Brayclean (phonetic) cleaner.

Q. And why was that of interest to you?,

A. If anything, it just perked my interest because that is something that I understand is used for manufacturing.

Q. Okay. And are you familiar—you said you were familiar with the Brendlin brothers through prior contacts?

A. Yes.

Q. Were you familiar in particular with Bruce Brendlin's criminal history?

A. I don't know, to be honest with you. I've arrested both of them before. I know that both of them have been associated with either weapons or narcotics.

Q. Okay. After arresting and putting Mr. Brendlin in the back of the patrol car, do you recontact the driver?

A. Yes.

Q. Is she still sitting in the car at this time?

A. Yes.

Q. When you recontact her, do you ask her to get out of the vehicle?

[20] A. Yes.

Q. Okay. What happens next?

A. She exited the vehicle, and I asked her to walk to the front of my patrol car, which she does.

Q. Okay. When you get to the front of your patrol car, what do you do?

A. As I started talking to her, she begins to place her hands in and out of her coat pockets; she's wearing a black bulky jacket.

Q. And do you say anything to her about that?

A. Yes.

Q. What do you say?

A. I asked her if she had any weapons inside her pockets.

Q: And what does she say?

A. "No."

Q. Does she continue—well, do you direct her to do anything with her hands?

A. Yes, I believe I told her to keep her hands out of her pockets, at which time the hands went back inside the pockets of the jacket.

Q. Now, at the point you're having this conversation with her, who else is on the scene?

A. It would have been Deputy Ramos, Officer Baker and Officer Hansen and Cadet Taber as well as Deputy Emerson.

Q. Deputy Emerson is another Sutter County deputy?

A. Correct.

Q. After you tell her to keep her hands out of her pockets, and she puts her hands back in, what happens next?

[21] A. I asked her again if she had any weapons in her pockets and she replied, "No."

Q. Then what happened?

A. I then proceed to do a pat down search for officer safety.

Q. Describe for me how you began your pat down?

A. I asked Ms. Simeroth to place her hands on top of her head, at which time I grabbed her hands with my left hand and began to do a pat down search with my hand.

Q. What is she doing during the time you're in a pat down search with your hand?

A. Initially she's standing there. As the pat down search progressed, she's moving to the right, away from me.

Q. Okay. Are you directing her to do anything when she's moving to the right?

A. Yes; she was told to stand there.

Q. Did she do that?

A. No.

Q. What did she do?

A. She continues to move to the right to avoid being searched.

Q. Okay. At some point during the time that you're patting her down, does Deputy Emerson direct your attention to something?

A. Yes.

Q. What does he direct your attention' to?

A. Deputy Emerson told me from his location he could see something in her waistband.

Q. Okay. Do you attempt to do anything in response to that information?

A. Yes.

[22] Q. What do you do?

A. I proceeded to run my fingertips along her waistband, at which time I felt some type of a bulky object inside of her waistband of her sweatpants.

Q. Okay. What is she doing at the time that you feel something in the waistband of her pants?

A. Still resisting.

Q. How is she resisting?

A. Moving to the side, moving to the right.

Q. Okay. Are you able to retrieve what's in the waistband of her pants?

A. Yes.

Q. How do you do that?

A. She is actually restrained by Deputy Ramos, and ultimately Cadet Taber retrieved the item from her waistband.

Q. Cadet Taber is a female?

A. Correct.

Q. Did you look at the items that were retrieved from her waistband?

A. Yes.

Q. What do you find?

A. Two syringes, one did not have a syringe cap on it, and a plastic baggy containing a green leafy substance.

Q. What do you do at that point?

A. Retrieve those items, and secure her, and place her in handcuffs.

Q. Okay. After arresting her, does she go in one of the patrol cars?

[23] A. Yes.

Q. Okay. Did you search the vehicle?

A. Yes.

Q. Okay. What do you find in the vehicle?

A. There was—I believe it was either a green- or blue-colored Rubbermaid container. I searched that. Inside that container there was tubing, a scale, and other items. In addition, there was a Nine Lives cat—either a cat litter container—it was a plastic container, and inside that was a liquid. And that container was completely sealed with gray duct tape.

Q. The Rubbermaid container that had the scale and the glassware, where was that located in the vehicle?

A. It was on the seat directly between the driver and passenger of the vehicle.

Q. What about the Nine Lives plastic container?

A. Same thing, it was on the seat.

Q. In the Rubbermaid container did you find any tin foil?

A. Yes.

Q. Did you find any filter papers?

A. Yes.

Q. Now, after seeing what was in the Rubbermaid container and the solution in the Nine Lives container, did you request the assistance of somebody?

A. Yes.

Q. And who was that?

A. I requested Net 5 be called out, and ultimately they responded.

[24] Q. Okay. who's Net 5?

A. It's the Yuba-Sutter local narcotics enforcement.

Q. Okay. So something in this Rubbermaid container and the Nine Lives container led you to believe this was possibly narcotics?

A. Correct.

Q. Did you also search a purse that you located in the vehicle?

A. Yes.

Q. Where was that purse located?

A. The purse was located on the front passenger seat.

Q. And what did you find in the purse?

A. Hypodermic syringe.

Q. Was there any identification in the purse?

A. Yes.

Q. And who was it for?

A. Simeroth.

Q. Prior to the time that you arrested Ms. Simeroth, had you asked her to search the vehicle?

A. Yes.

Q. Okay. And what did she say when you asked her to search the vehicle?

A. I believe I asked her if there was anything illegal inside the vehicle, and she said no, however, she had not been driving it most of the day.

Q. Did she ever answer you yes or no with regard to your question to search?

A. I don't think she did.

Q. At some point did you call dispatch and request that the [25] registration be run?

A. Yes.

Q. And what information did you receive with regard to that?

A. Dispatch advised that the vehicle was expired as of September 27, '01, with an application in process.

Q. Sometime later did you—I'm sorry—strike that.

Deputy Ramos, did he transport Ms. Simeroth to the jail for you?

A. Yes.

Q. Sometime after she was transported to the jail did he provide you with something?

A. Yes.

Q. What did he provide you with?

A. He provided me with a-large plastic baggy; and inside this bag was another plastic baggy containing a white powdery substance and another plastic baggy containing a green leafy substance.

MS. GREEN: No further questions.

MR. WARRINER: Okay.

CROSS-EXAMINATION

BY MR. WARRINER:

Q. When you first saw this vehicle you were traveling in your patrol vehicle?

A. Yes.

Q. And you had a cadet with you; is that right?

A. Yes, correct.

Q. You were in a marked patrol vehicle?

A. Yes.

[26] Q. And this had rack lights on the top?

A. Yes.

Q. Okay. And then you basically—you followed the vehicle that Simeroth and Brendlin were in for some period; is that right?

A. Yes.

Q. Okay. Because you made some observations about the registration tags?

A. Yes.

Q. And you were making those observation as you were following the vehicle?

A. Yes.

Q. And one of the observations you made is that the small tag that's affixed to the license plate was expired?

Is that what you're saying—

A. Yes.

Q. —that that registration tag was expired?

A. Yes.

Q. Now, you referred to a DMV temporary sticker that you saw, do you recall that?

A. Yes.

Q. Okay. And what that is is [sic] a DMV temporary registration sticker; is that true?

A. I refer to it as a DMV sticker.

Q. You don't like to use the word "registration" with that sticker?

A. I'm sure it's probably called that, but I refer to it as a DMV sticker.

[27] MR. WARRINER: Can I approach, Your Honor?

THE COURT: You may.

MR. WARRINER: I'd like to have this marked. I think this is consistent with what is in the Court's packet.

THE COURT: It's actually called a temporary operating permit.

MR. WARRINER: Temporary operating permit, okay.

(Defense Exhibit A was marked for identification.)

BY MR. WARRINER: Q. Okay, Officer, I'm showing you Defense Exhibit A, and I want you to look at that. Do you recognize that?

A. I recognize the temporary sticker and the 11 on it, that's it.

Q. Okay. Is what's depicted in that exhibit that you're looking at, is that consistent with what you observed on the 27th of November, 2001?

A. I would say so. The writing and the date at the bottom, that's unknown.

Q. Okay. And you have seen those stickers before?

THE COURT: May I see that?

THE WITNESS: Yes, Your Honor.

(Pause.)

THE WITNESS: Yes, I have.

BY MR. WARRINER: Q. And—okay. And you don't use the word "registration"; but basically that sticker has something to do with allowing the vehicle to operate on the roadways and highways of the state, is that true—

A. Yes.

[28] Q. —when that sticker is given to you?

MS. GREEN: Objection; calls for a legal conclusion.

THE COURT: Sustained.

MR. WARRINER: Okay.

Q. Do you know what that sticker means?

A. My understanding is that when a vehicle is expired, a person can go in to DMV and obtain that sticker, but there is still is other items that need to be taken care of before that vehicle can drive.

Q. So you're saying even if you have that sticker you can't drive?

A. That's my understanding.

Q. Okay. So it is your practice if you saw any car with a sticker like that in the exhibit I've just shown you, and an expired tab on their license plate, you feel that you would be able to pull them over?

A. I believe I would have to verify whether or not that sticker belonged to that vehicle.

Q. Okay. So just looking at the sticker, you're saying that's not good enough, you would actually have to pull them over and conduct a verification?

A. Correct. Based on my experience, over 11 years, with the sticker, its not being a fixed object—it's paper—it's tape—

Q. Uh-huh.

A. —people are—have been known to remove it to avoid paying penalty fees.

Q. Okay. And so you've seen cases of these removed stickers?

[29] A. Yes.

Q. Have you seen cases of removed stickers such as that sticker shown in the exhibit I've shown you?

A. I'm sorry?

Q. In other words, these temporary stickers. When we're talking about cases of removing stickers, are you talking about these temporary stickers?

A. Yes. People have removed stickers to avoid paying penalties, yes.

Q. What about the little sticker, the license plate tab, do people remove those and switch them around on vehicles?

A. They do.

Q. There's no difference between that little sticker and this temporary sticker in the Defense exhibit I've shown you; is that right?

A. If I understand your question correctly, people will put false tabs on license plates.

Q. Right.

A. They will put false temporary stickers in a window, okay.

Q. Right.

A. Whether it's the case in this case, I don't know.

Q. And when you were traveling down the road, and when you were traveling behind the vehicle that Brendlin and Simeroth were in, you didn't know if in fact that temporary sticker was a false sticker?

A. That's correct.

Q. And did you—I mean, there was nothing about the sticker, the way it was affixed in the vehicle that made you suspect that [30] it was wrongfully placed in the vehicle? Was there anything unusual about the sticker, the way it was placed on the vehicle?

A. No.

Q. Okay. You didn't see it peeled away or if it was put up sort of haphazardly?

A. It's also 1:30 in the morning or so, so, yes.

Q. Okay. So 1:30, at that time, that has significance for you?

A. It's dark outside; so therefore, it was unlike daylight, where your advantage of seeing the sticker would be a lot better.

Q. Okay. Yeah, right.

Given the conditions at 1:30 in the morning, it wasn't that light, you didn't see anything to make you think that sticker shouldn't have been on the vehicle?

A. Correct.

Q. All right. And then you were traveling down the road, and you're observing the sticker, and there's some point where you put on your rack lights; is that right?

A. My overheads, yes.

Q. Overhead lights?

A. Yes.

Q. And do you put on a siren, too?

A. No.

Q. Okay. You put on your overhead lights and that's when you effect this traffic stop with the vehicle?

A. Yes.

Q. This is just on a street here in town; is that right?

A. Yes.

Q. Okay. And do you pull up behind the vehicle or on the side [31] of the vehicle?

A. Behind the vehicle.

Q. And when you pull up behind the vehicle you still leave your lights on; is that correct?

A. Correct.

Q. And do you—at that point do you run the license plate—do you radio that license plate in to dispatch so they could do a check on the license plate?

A. No.

Q. Did you do anything like that immediately when you stopped the vehicle?

A. Yes. The plate was ran, yes.

Q. So that's pretty much standard operating procedure, right, if you stop somebody you're going to radio in their license plate to dispatch so you have this check going on them?

A. Yes.

Q. And you did that?

A. Yes.

Q. That takes a few seconds. How long does it take, what do you?

A. Depends on how busy dispatch is.

Q. Sure. Do you recall in this case what you did when you radioed that information in?

A. No.

Q. But that occurs after you stopped the vehicle, the vehicle in front of you. And then you make this radio call; is that right?

A. No.

[32] Q. No. It happened as you were—when did it happen?

A. An unknown time before the actual stop itself. Originally the vehicle—I saw the vehicle at Circle K.

Q. Okay.

A. The vehicle was parked at a pay phone. I didn't see the occupants. I ran the plates and they came back expired. At that time my partner and I did something else; and ultimately while we were traveling on Franklin Road, the vehicle was in front of us.

Q. Okay. So it sounds like you ran the plate some time ago basically?

A. Yes.

Q. This was at Circle K?

A. Yes.

Q. Was there something about the vehicle that caught your eye at Circle K?

A. The expired tags on the vehicle.

Q. Okay.

A. At that point didn't see the temporary sticker.

Q. Okay.

THE COURT: Dispatch had already radioed you back before you ever saw the car the second time, that the registration was expired?

THE WITNESS: That is correct.

THE COURT: Okay.

BY MR. WARRINER: Q. But at the time you pulled the vehicle over, at that point you had seen that red tag; is that right?

A. Yes.

Q. When we refer again to that exhibit in front of you, and [33] also to your recollection, it had Number 11 on the vehicle you pulled over; is that right?

A. Yes.

Q. That 11 refers to a month?

A. Yes.

Q. Yes. That would mean for the eleventh month, November, that that vehicle could operate? Is that your understanding?

A. I don't know if there is an ending date, if there is a specific date within that month.

Q. Right; but your understanding is that the 11 means a month?

A. That's correct.

Q. And if it were—if the month were—if it were December, and you had a temporary sticker that had 11 on it, what would you think?

A. I'm sorry?

Q. Okay. Let's say this happened in December. Okay?

A. Okay.

Q. And if you ran upon a vehicle that had a temporary sticker with the number 11 on it—

A. Okay.

Q. —what—how would you treat that situation?

A. That it would be expired.

Q. Okay.

THE COURT: For the record, it reads: "This permit expires on the last day of the month indicated by the bold white number."

MR. WARRINER: All right.

Q. Then I think we got off track; but I was talking about how [34] you pulled over the vehicle and you put on your lights. Is that what you said, you put on your lights?

A. Yes.

Q. And you said by the time you pulled over the vehicle you had already radioed the license plate into dispatch?

A. Correct.

Q. So you already had this information in your mind?

A. Correct.

Q. So when you had pulled over the vehicle then did you immediately get out of the vehicle?

A. Well, I mean I have to put the vehicle in park; and ultimately, yes.

Q. Sure, within reason.

I'm wondering, did you radio in any other information immediately after you stopped the vehicle?

A. When the vehicle was stopped, either myself or my partner radioed the license plate, the description and the location.

Q. Okay. So that was the second time you radioed in information about this vehicle to dispatch?

A. Correct.

Q. Okay. And then it was after you did that is when you got out of your vehicle and approached the vehicle?

A. Yes.

Q. Now, the partner with you was a cadet?

A. Correct.

Q. Did the cadet stay in your vehicle or did the cadet get out of your vehicle and walk up to the Simeroth vehicle?

A. She did not.

[35] Q. She stayed in the car?

A. She either sat in the car or she was standing by the door.

Q. All right. And when you approached the vehicle, you were parked behind the vehicle?

A. Yes.

Q. And the—and your flashers were going—your police lights were going?

A. Yes.

Q. Did you put on your spotlight, that powerful bright light?

A. I did.

Q. And did you use that to effect the stop—as a way to effect the stop by putting that light on?

A. No.

Q. Okay. But after your vehicle was stopped and Simeroth's vehicle was stopped, then you applied that light; is that correct?

A. Yes.

Q. And is that light—what was the purpose of applying that light at that time, the vehicle was already stopped?

A. Well, we're talking—it's 1:30 in the morning, so obviously the spotlight is used so I can see the vehicle.

Q. Okay. So to illuminate this whole area?

A. Correct.

Q. All right. All right. And you were in your police uniform too; we're assuming you were?

A. Yes, with my duty belt.

Q. And you had a gun on, right?

A. Yes.

[36] Q. Did you have your gun drawn?

A. At what point?

Q. Well, I mean we're saying this is at 1:30 in the morning, right?

A. Yes.

Q. And you're approaching the car alone; is that right?

A. Yes.

Q. Did you undo the snap on your holster?

A. No.

Q. Did you have your hand by your gun, you know, as if you were ready just in case something happened?

A. I might have had my hand by the gun.

Q. Okay.

A. I might have even placed my hand on the gun for officer safety; I never know what the driver or occupants are going to do.

Q. Okay. Right. And that's part of your training, because you're being careful when you approach a vehicle because you don't know what's going to happen?

A. Correct.

Q. As you approached the—driver's side or passenger side?

A. Driver's side.

Q. That was Ms. Simeroth's side?

A: Yes, she was driving the vehicle.

Q. And also, when you pulled the vehicle over, did you ever get on that little speaker—and I've had officers do that, get on their speaker and say something to you like, "Pull over," or "Stop your vehicle."

[37] A. I didn't.

Q. When you pulled the vehicle over, did you see the occupants in the vehicle doing anything inside the vehicle?

A. No.

Q. Did you make any orders to the occupants of the vehicle, such as "Stay put, Put your hands up," or anything?

A. I did not.

Q. Did you—did they roll down the window? Was the window rolled down?

A. I don't recall, other than when I approached the vehicle the window was down, I believe.

Q. Okay. Did either—anyone from the passenger side or driver's side try to open the door or get out of the vehicle?

A. Yes, at one point the passenger door opened.

Q. Okay. And when was that point?

A. After the vehicle was stopped.

Q. Okay. Well, was it after you contacted Simeroth?

A. Yes.

Q. Okay. And was it after you looked and seen that Brendlin might be somebody you might have recognized?

A. Yes.

Q. All right. So then you approach the driver's side; and did you ask the driver for identification?

A. I did.

Q. And did you shine your light into the passenger—into the compartment of the vehicle?

A. Yes.

Q. And at that point did you radio that information in to [38] dispatch, the driver's information?

A. No.

Q. Did you ask for the passenger's information at that point?

A. I asked who the passenger was; he identified himself verbally. I didn't ask for any identification or a wallet or anything like that.

Q. And when you did that you were still on the driver's side of the vehicle?

A. Yes.

Q. Did you ever go to the passenger side of the vehicle and the passenger and ask any questions on that side?

A. No.

Q. No. It was all done through the driver's side?

A. Yes.

Q. Didn't you eventually go over to the passenger side because you got Mr. Brendlin at—

A. Yes, after it was confirmed he was a parolee at large, he was ordered out at gunpoint and ultimately taken into custody at that time.

Q. I asked a question about the gun. You didn't—there was a point that you learned he apparently had a warrant; that's when you used the gun at gunpoint?

A. That's correct.

Q. You didn't bring the gun out before then?

A. Did not.

Q. Okay. After you asked Ms. Simeroth for her identification, what did you do immediately after that, do you recall?

A. Identified who the passenger was, obtained his name—

[39] Q. Okay.

A. —and ultimately walked back to my patrol car.

Q. Why did you walk back to your patrol car as opposed to staying there with the occupants of this vehicle?

A. To run the information that they provided.

Q. And you were going to run it in your computer that you have in your car?

A. No, our vehicle is not equipped with—

Q. I guessed so. But you were going to radio it back in to dispatch?

A. Correct.

Q. You went back, sat in your car, and you radioed this information in?

A. No, actually I stood at the rear of my patrol car or—at the rear of—or at the passenger door of my patrol unit, and that's when it was radioed in.

Q. And this whole time while you're doing this the red lights are going on your police vehicle?

A. Correct.

Q. And the large—what is that called, the bright light?

THE COURT: Spotlight.

MR. WARRINER: Spotlight.

Q. That's on as well?

A. Yes.

Q. And then—so you radioed this information in. And did you get a response back from dispatch?

A. Yes, eventually.

Q. Once you got that response what did you do?

[40] A. I was told Brendlin was the parolee at large, and he was taken into custody.

Q. Okay. From the point where you asked Ms. Simeroth for her identification and asked Mr. Brendlin to identify himself, to the point where you learned that Mr. Brendlin had a warrant for his arrest, approximately how much time went by?

A. A couple minutes.

MR. WARRINER: All right. No further questions.

THE COURT: Mr. Hansen.

MS. GREEN: Oh, sorry.

THE COURT: He's interested in the traffic stop.

CROSS-EXAMINATION

BY MR. HANSEN:

Q. Deputy Brokenbrough, you said you saw this vehicle at Circle K?

A. Correct.

Q. What time of day was that?

A. I don't remember offhand.

Q. The same evening?

A. Yes.

Q. Hours before?

A. Yes.

THE COURT: Was it already dark when you saw it at Circle K?

THE WITNESS: Yes, it was. Yes.

BY MR. HANSEN: Q. And you saw the license—the license plate and sticker on the license plate at that time?

A. Yes.

Q. And you did not see the red sticker with the 11 on it at [41] that time?

A. I did not.

Q. Where was the sticker, the red sticker with the 11 on it, placed in the car?

A. It was placed on the back windshield.

Q. Windshield?

A. The rear window of the vehicle, at the—I want to say the driver's side, lower corner.

Q. Do you have any knowledge of what the Vehicle Code requires for placement of a sticker like that?

A. I don't.

Q. Do you know if it has to be any particular location on the car?

A. My understanding is that it has to be either on the rear window or the front windshield, visible.

Q. And it was on the rear window?

THE COURT: When you say rear window, I don't know what you mean; like the rear passenger window, rear driver window?

THE WITNESS: The back of the car, the back window of the vehicle.

THE COURT: The back?

THE WITNESS: Yes.

THE COURT: Okay. Like the rear windshield or whatever you want to call it. Okay, thank you.

BY MR. HANSEN: Q. The window in the back that goes from side to side?

A. Yes.

Q. Above the trunk?

[42] A. Yeah.

THE COURT: So the one that doesn't open?

THE WITNESS: That's correct.

BY MR. HANSEN:

Q. And that's where the sticker was?

A. Yes.

Q. Now, the license plate was also on the back of the vehicle, wasn't it?

A. Yes.

Q. So when you're looking for the first time and seeing this license and getting the information off it, why couldn't you see the red 11 sticker?

A. I don't know, other than from the way the car was positioned, the way it was parked. What caught my—initially caught my eye was the color of the year. And with that being an expired tab, that caught my attention. At that point I ran the plate, I didn't see the sticker.

Q. Okay. The color of the year, that wasn't expired yet, was it? It wasn't a 2001 sticker?

A. It was '01, but it was also September. Since we were in November—

Q. But the year was okay?

A. Yes.

Q. But you say there was a September sticker on it?

A. Yes.

Q. So you ran that information. And it came back expired?

A. Yes.

Q. And you got some additional information besides the fact it was expired, didn't you?

[43] A. Yes.

Q. And what was that?

A. Application in process.

Q. And was that the only thing you were told, application in process?

A. Besides the registered owner—I don't know if I understand the question.

Q. What did the application in process mean to you?

A. To me that means that there are still other things that are needed to lawfully drive that vehicle.

Q. And it was not your understanding that the type of sticker represented by the red sticker with 11 on it gave permission to a person to drive that vehicle?

A. It very well may, but I still need to verify whether that sticker belongs to that vehicle.

Q. Who said that?

A. I don't know who said it; but with my experience, knowing that people will avoid paying, you know, registration—they will affix the false sticker tab to avoid paying penalties, whatever the case may be.

Q. When you saw the vehicle you said there were no people around at that time?

A. I didn't see anyone.

Q. Had you seen the vehicle before that time?

A. No.

Q. Did you know Ms. Simeroth?

A. I don't think I've had any contact with her.

DEFENDANT SIMEROTH: You have.

[44] MS. GREEN: For the record, that was Defendant Simeroth.

THE COURT: Thank you.

BY MR. HANSEN: Q. when you saw the vehicle later, could you clearly see the sticker with the 11 on it?

A. Yes.

Q. So you knew it was there at the time you were following it?

A. Yes.

Q. You said you called the information in again?

A. That would have been sometime after the fact.

Q. All right. So as you're following the vehicle, it's before you stop, but you don't call it in again?

A. Correct.

Q. You didn't call in to ask dispatch if it was a temporary license by virtue of the tag with the number 11/00 on it?

A. Correct. I went on what dispatch had told me earlier.

MR. HANSEN: I don't have any other questions.

REDIRECT EXAMINATION

BY MS. GREEN:

Q. When you ran the car at Circle K, dispatch informed you that it was expired, application pending?

A. Yes.

Q. Is there something about the information that was provided to you at that time—did they provide you the name of the registered owner at the time you ran the car?

A. Yes.

Q. Who did they tell you was the registered owner?

A. Gail Tonner or Gail Tonner.

Q. When dispatch came back with that information did you [45] recognize that name?

A. Yes.

Q. How did you recognize it?

MR. WARRINER: Objection; hearsay.

THE COURT: I'll overrule it.

BY MS. GREEN: Q. Have you had some personal contact with Gail Tonner?

A. Yes.

Q. Tell me about it.

A. When I was assigned to detectives,-I had investigated where she was a victim of a theft of a handgun.

Q. Okay. So when they came back with the registration information, expired, application pending, and gave you the owner's name, you were kind of like, oh, I know who that is?

A. Yes.

Q. Was it 11 years you've been a police officer?

A. Over 11 and a half.

Q. Okay. In your experience, have you known—have you, in your experience as a police officer, known that

temporary tags, the ones we're talking about in the rear window, have been stolen out of people's cars?

A. Yes.

Q. And people report them as being stolen?

A. Yes.

Q. That's also true of this tab you put on your car or license plate?

A. Yes.

Q. Have you had experience with people falsifying those rear [46] window stickers?

A. Yes.

Q. Like making them up?

A. Yes.

Q. Okay. Have you—do you have any experience with people having expired—like it matches their car but it's from like two years ago, in the window?

A. Yes.

Q. Okay. The temporary tag that's stuck in the back of the window, how are those put back in the window, do you know?

A. I'm assuming with tape.

Q. Okay. So you're familiar with registration tabs that you put on the license plate?

A. Yes.

Q. And those come self-sticky from the Department of Motor Vehicles when they're mailed to you?

A. Correct.

Q. That's different from the tags that you put in the back of the window?

A. When we're talking about tabs, tabs have some type of adhesive that sticks to the plate; therefore, when those are removed, whatever the case may be, there's usually some type of evidence.

Q. They're also pretty sticky aren't they?

A. Yes.

Q. Hard to get off?

A. Yes.

Q. Do you have that photograph in front of you there? If I [47] could see that.

(Pause.)

BY MS. GREEN: Q. Showing you Defense Exhibit A, there's some writing on this, I'd like you to read to me what's written on that tag, starting with "fees."

A. "Fees to register this vehicle or vessel have been made to the State of California, Department of Motor Vehicles. This permit must be supported by either, one, a Department receipt or—the receipt number and the receipt number shown on this permit must agree; or 2, a letter issue used by the Department confirming the issuance thereof of a permit."

Q. In the back window—did you see a receipt taped to the back window?

A. No.

Q. Did you see a letter from DMV taped on the back of the window?

A. No.

Q. Would those be items you could see from your patrol car when you're driving behind the vehicle?

A. Yes.

Q. You could see those items if they were taped on?

A. Yes.

Q. Would you be able to read them from your patrol car?

A. No.

Q. Okay. There's—also taking a look at Defense Exhibit A, there's an area for license plate number; is that right? There is a blank line where you fill out this information?

A. Yes.

[48] Q. There's also space for an engine number; is that right?

A. Yes.

Q. What's an engine number?

A. That would be the number that's stamped on the engine.

Q. Is that different from a VIN number?

A. I would assume so, but I don't know for sure.

Q. Okay. And there's also an area to write a receipt number a blank line; is that right?

A. Yes.

Q. Okay. So prior to the time that you stopped the car, dispatch had informed you that the tags were expired when you ran the license plate; is that right?

A. Yes.

Q. And the information that they provided, you matched the tabs that were on the vehicle; is that right?

A. Yes.

Q. Okay. And then sometime after the stop you ran the vehicle again and it again—they told you it was expired?

A. Correct.

Q. Now, after you approached the vehicle and you saw Mr. Brendlin or someone you recognized as one of the Brendlin brothers, did that cause you some concern?

A. Yes, only because I knew one of them was a parolee at large; I didn't know which one at that point.

Q. So at the point that you saw him in the vehicle, you had some concern about "parolee at large." Was there anything in particular about—well, you had previously said that you were familiar with them through weapons and possibly drugs?

[49] A. Yes.

Q. Okay. During the time that you're waiting to have confirmation on the warrant, and the door opens, do you have any concerns then?

A. Yes.

Q. What are your concerns?

A. That he is either going to flee from that location from the vehicle itself—

Q. Okay. When the warrant is confirmed—strike that.

You said you called for backup before the warrant was confirmed?

A. Yes.

Q. Why?

A. Mainly because I didn't know, number one, if this was the parolee at large; and if it was, I wanted a second unit there.

Q. Okay. So is it fair to say, then, that once you approached the car and recognized the passenger, that the issue about the license plate really became secondary?

A. Correct.

MS. GREEN: No further questions.

THE COURT: Mr. Warriner.

RECROSS-EXAMINATION

BY MR. WARRINER:

Q. I'm having another exhibit marked, which is another exhibit in the Court's—yeah.

(Defense Exhibit B was marked for identification.)

BY MR. WARRINER: Q. I'm showing you Defense Exhibit B; do you recognize that?

[50] A. Yes.

Q. Okay. What does that look like to you?

A. It's a photograph pertaining to the vehicle I stopped.

Q. And what do you see contained in the rear window?

A. A temporary operating permit with the number 11.

Q. And does that look like it was that night or that early morning when you stopped the vehicle on the 27th of November?

A. Yes.

Q. And—well, let me see the picture.

And is that in the same location that it was in?

A. As long as it hasn't been moved.

Q. But it looks right to you?

A. Yes.

MS. GREEN: With "location," we're talking about the location of the sticker?

MR. WARRINER: Obviously it's not the vehicle.

MS. GREEN: I wanted to confirm for the record because that's not clear.

MR. WARRINER: Yeah.

Q. And it's true on the night and early morning when you stopped the vehicle there was nothing about the sticker that made you think that that sticker on Defense Exhibit B was stolen?

A. That's correct.

MR. WARRINER: No further questions.

THE COURT: Mr. Hansen.

MR. HANSEN: Yes, briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. HANSEN:

[51] Q. When you saw the car the first time at Circle K, did you go up and look in it?

A. No.

Q. You could have tagged it right then, couldn't you?

A. I could have.

Q. You could have written it and left a citation on the windshield?

A. Yes.

Q. But you chose not to?

A. We either got dispatched to another call—but got rerouted some how.

Q. And you didn't go up and look at the car?

A. No.

MR. HANSEN: Nothing further.

MS. GREEN: Nothing further.

THE COURT: Okay. You may step down.

THE WITNESS: Thank you.

MS. GREEN: I'd ask that he remain.

THE COURT: Next witness.

MS. GREEN: Cliff Bowman.

CLIFF BOWMAN,

a witness called by the People, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

DIRECT EXAMINATION

BY MS. GREEN:

Q. Please state your full name and spell your last name.
A. Clifton Bowman, B-O-W-M-A-N.
[52] Q. Would you spell Clifton?
A. C-L-I-F-T-O-N.
Q. Sir, what is your occupation?
A. Dispatch.
Q. For the Sutter County Sheriffs' Department?
A. Sutter County Sheriff's Department.
Q. Were you working on November 27, 2001?
A. Yes.
Q. And do you recall a time when Deputy Brokenbrough called into dispatch and requested that you check on whether or not a particular person was a parolee at large?
A. Yes.
Q. That person being Bruce Edward Brendlin?
A. Yes.
Q. Okay.

MS. GREEN: Your Honor, I have a document that I'd like marked as People's 1.

(People's Exhibit 1 was marked for identification.)

BY MS. GREEN: Q. What do you do—what did you do in response to Deputy Brokenbrough's call, in response to whether or not there was a warrant?

A. Called the Department of Corrections.

Q. Did you speak with someone at the Department of Corrections:

A. Yes.

Q. What did they tell you?

A. That there was an active warrant.

Q. Do you recall what the warrant was for?

A. Parole violation.

[53] Q. Okay.

THE COURT: For what?

THE WITNESS: Parole violation.

BY MS. GREEN: Q. I'm showing you People's Exhibit 1 for identification.

I'm showing this to counsel first.

Mr. Warriner has already received a copy of it, Your Honor.

Q. People's Exhibit 1 for identification, would you take a look at that document and tell me if you recognize it?

A. Yes.

Q. What is it?

A. It's a copy of a warrant abstract.

Q. Okay. And when you say a warrant abstract, it's a teletype of information, with respect to CDC, of warrants?

A. Yes.

Q. CDC being California Department of Corrections?

A. Yes.

Q. And what—is this a document that you would be printing at the sheriffs' department?

A. Yes.

Q. Okay. And how do you obtain this information?

A. Via teletype from the Department of Corrections.

Q. Then you print it out while you're working as a dispatcher?

A. Yes.

Q. What does this document tell?

A. It lists the name, physical description and what the violation is.

Q. Okay. And does it indicate that there's a—was a warrant [54] for Bruce Edward Brendlin?

A. Yes.

Q. And it was a no bail warrant?

A. Yes.

Q. After you talked to the person at CDC, did you provide that information to Deputy Brokenbrough?

A. Yes.

Q. Okay. And after you print this document, where does it go?

A. To the jail.

Q. And that's when he's booked on the warrant?

A. Yes.

MS. GREEN: No further questions.

MR. WARRINER: No questions.

MR. HANSEN: No questions.

THE COURT: Thank you.

THE COURT: Is this witness excused or do you want him to remain?

MS. GREEN: We can just have him remain.

I'd call Larry Dunn.

LARRY DUNN,

a witness called by the People, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified on his oath as follows:

THE COURT: For the record, unlike most witnesses in Sutter County, I happen to know this witness who was a probation officer in Butte County for a number of years. I have never socialized with him, but he's been there for a number of years before he took whatever job he now has. I did not recognize him in the [55] hallway.

DIRECT EXAMINATION

BY MS. GREEN:

Q. Please state your full name and spell your last name.

A. Larry Allen Dunn, D-U-N-N.

Q. What is your occupation?

A. State parole agent.

Q. And on November 27th, 2001, were you the parole agent for Bruce Edward Brendlin?

A. Yes.

Q. Are you familiar with him?

A. Yes.

Q. Do you see him in court today?

A. Yes.

Q. Would you point him out, describe what he's wearing and where he's sitting?

A. He's the gentleman that just waved at me that is sitting at the table right in front of me wearing the orange sweatshirt.

THE COURT: Let the record reflect he's been identified.

BY MS. GREEN: Q. I'm showing you People's Exhibit— Mr. Warriner has a copy of it. I'll show it to Mr. Hansen.

(Pause.)

BY MS. GREEN: Q. Showing you People's Exhibit 2 for identification, would you take a look at that document and tell me if you recognize it?

A. Yes, I do.

Q. What is it?

A. It's an at-large report that I authored and signed off on [56] November 19, 2001.

Q. What is an at-large report?

A. An at-large report is also referred to as a PAL report.

THE COURT: A what?

A. A P-A-L report, parolee at large. It's a report that I author as a result of an investigation, which is a statement by me that the parolee is avoiding supervision and that his or her whereabouts are unknown. It is also a formal request from me that the Board of Prison Terms suspend parole and issue an arrest warrant.

Q. Did you actually submit that to the Board of Prison Terms?

A. Yes, I did.

Q. When was that authored?

A. November 9, 2001.

Q. Okay. Showing you what's been marked as People's Exhibit 3 for identification, do you recognize what that documents is?

A. Yes, I do.

Q. What is it?

A. It's a Central office Calendar decision which reflects that the Board of Prison Terms received my report, ordered parole suspended and that a warrant was issued for Mr. Brendlin's arrest, with the last—his name and CDC number at the bottom.

Q. Was in fact a warrant issued for Mr. Bruce Brendlin for absconding?

A. Yes, ma'am.

Q. You're familiar that that warrant had been entered into the system prior to the time of November 27th, 2001?

A. Yes.

[57] Q. Okay. showing you People's Exhibit 1 for identification, do you recognize what that is?

A. It's an abstract of judgment—excuse me—abstract reflecting the PAL warrant for Mr. Brendlin.

Q. Okay. That's the information that CDC puts in its computer system for law enforcement, with respect to the parolee warrants?

A. Yes, ma'am; the CLETS system on the warrants.

Q. That specifically relates to Mr. Brendlin, correct?

A. Yes.

Q. Does that document tell you when the warrant was entered into the system?

A. Yes, it does.

Q. And when does it say it was entered into the system?

A. November 15, 2001.

MS. GREEN: The People would move items 1, 2 and 3 into evidence, Your Honor.

THE COURT: Any Objection?

MR. WARRINER: No Objection.

THE COURT: Received.

(People's Exhibits 1, 2 and 3 were received in evidence.)

MS. GREEN: No further questions.

THE COURT: Mr. Warriner.

CROSS-EXAMINATION

BY MR. WARRINER:

Q. In regard to Exhibit 3, it says his parole status was suspended as of 10/18/01?

A. Yes, sir.

Q. And so that would mean on November 27, 2001--was Mr. [58] Brendlin patrol status suspended at that time?

A. Yes, sir.

Q. And you're saying that a warrant was issued because of his at large status?

A. Yes, sir.

Q. When it says "suspended," it means that basically—basically a warrant goes out rather than him continuing to be on parole; is that right?

A. No, sir.

Q. No?

A. No.

Q. Does that mean that your supervision of him is suspended?

A. No, sir.

Q. Okay. But your actively looking for him in order to arrest him at that time?

A. Yes, sir; if I find him, I will arrest him.

Q. Okay. I see. Because there's a warrant in the system?

A. Yes, sir.

MR. WARRINER: Okay. No questions.

MR. HANSEN: No questions.

REDIRECT EXAMINATION

BY MS. GREEN:

Q. With respect to a parolee who is in that suspended status, are they still subject to the same search conditions?

A. Yes, ma'am.

MS. GREEN: No further questions.

MR. WARRINER: No questions.

THE COURT: Does parole suspended simply mean they don't [59] have the right to be out on parole?

THE WITNESS: It means that the clock has stopped. In probation the terms are a bit different; it would be "revoked." The terms of conditions remain in effect, but the clock is stopped in order to retain jurisdiction.

THE COURT: Okay.

MS. GREEN: No further questions.

MR. WARRINER: No further questions.

THE COURT: Thank you.

THE WITNESS: Yes, ma'am.

Ms. GREEN: No further witnesses.

MR. WARRINER: Defense would call Investigator Mark Regan.

MARK REGAN,

a witness called by the Defense, after having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. WARRINER:

Q. Mr. Regan, what is your role in regards to the Brendlin case?

A. I am a licensed provide gather retained by the Sutter County Public Defender's office to work on your behalf for the defendant.

Q. And what is your—as a private investigator, what is your prior experience for this job?

A. To become a licensed private investigator, you have to have 6,000 hours prior investigating experience to utilize. I was deputy sheriff with the county of Sutter for 11 years, full time; [60] prior to that, two years.

Q. Okay. And did you perform some tasks in this Brendlin case in regards to this temporary sticker?

A. Yes.

Q. What did you do?

A. I went to Geweke's tow yard at—gosh, I forget. I think it's 10th and S Street, in that area, where they have a storage facility, and photographed the vehicle.

Q. All right. And how did you know that you were photographing the right vehicle?

A. I compared it to the police report prepared by Officer—or Deputy Brokenbrough. The license plates matched the vehicle description and the police report matched.

Q. Okay.

A. And eventually the vehicle registration. And it matched all the information in the report and the CLP.

Q. Okay. I'm going to show you Defendant's Exhibits A and B; can you look at those?

A. Yes.

Q. Do you recognize those?

A. Yes, I do.

Q. What does Defense Exhibit A depict?

A. A is a photograph that I took of the vehicle—of the sticker on December 12th, while it was in the storage yard.

Q. Okay. And that's the so-called temporary sticker that's in the rear window of the vehicle?

A. It's a temporary operating permit.

Q. Okay. Temporary operating permit.

[61] I suspect when you took that picture in Exhibit A you were taking it through the glass in the vehicle. How did you take that picture?

A. Without comparing to the other photographs—I took 10 photographs. I took photographs of the sticker while it was still mounted in the vehicle, as it was when I came upon it, and then I took photographs when we moved it to the back of it, also.

Q. Exhibit B, what does that depict?

A. B is a photograph of the vehicle from which the defendants were arrested and is referenced to in the police report authored—written by Deputy Brokenbrough.

Q. Did you—the interior of the vehicle?

A. Very briefly.

Q. Okay. Did you ever find a receipt in the vehicle?

A. I found a DMV receipt, along with the registration.

Q. Where was that found?

A. I believe—I don't recall if it was in the glove box—I think—I believe, if I'm not mistaken, it was on the floorboard or the seat.

Q. And let me show you some photographs. I'm going to have these marked as Defendant's Exhibits C and D. I've shown these to Counsel.

(Defense Exhibits C and D were marked for identification.)

BY MR. WARRINER: Q. Okay. I'm showing you Defendant's C and D. Do you recognize those exhibits, the pictures?

A. Yes, I do.

Q. What is Exhibit C?

[62] A. C is a photograph of the receipt that was attached to the registration in the vehicle.

Q. All right. And what is Exhibit D?

A. D is—it's a report of deposit of fees for the vehicle and part of the registration and receipts.

Q. And who's the registered owner of the vehicle?

A. This indicates that the registered owner on this receipt is Gail Tonner, T-O-N-N-E-R.

Q. Now, the picture that you took of that receipt, did you confiscate the actual receipt or did you just take that picture?

A. I took photographs and left everything in the vehicle, which was locked.

Q. Let me see Defense A and B again. I'm going to show you Defense Exhibit A. Is there any way you can tell by looking at Defense Exhibit A, and then looking at Exhibits C

and D, whether that receipt corresponds to that temporary operating permit?

A. Yes.

Q. How can you tell?

A. The date stamped and numbers on the receipt and dates are—they correspond, as well as the receipt is stamped "through November," which is consistent with the 11 on the temporary operating permit. Additionally, although not clear in this photograph—they're designed to fade, these stickers—is the vehicle license plate and the month and date and other information that DMV puts on these. So they're seen and displayed in the window to match the registration and people paying fees.

Q. Okay. And on these Exhibits C and D, it looks likes [63] there's—is there handwriting on there?

A. That's correct.

Q. What does that state?

MS. GREEN: The item speaks for itself, Your Honor.

THE COURT: If I can read it in the picture.

MR. WARRINER: What does it appear—

THE COURT: I'm going to go over it.

THE WITNESS: I'm sorry.

THE COURT: Go ahead.

THE WITNESS: In the—it says at the top, "And through November," and the initials, VR.

MR. WARRINER: Okay.

THE WITNESS: Did you want to see those?

(Witness handing document to the Court.)

BY MR. WARRINER: Q. When you were with the special detectives—what years were you with the special detectives?

A. From 1977 through 1988.

Q. When you were with the sheriffs' department did you ever work patrol, where you would drive around in a patrol vehicle?

A. Yes.

Q. Did you ever make traffic stops?

A. Yes, I made quite a few.

Q. Have you ever seen, when you were a police officer, seen temporary operating permits such as that depicted in Exhibit A?

A. Yes, I have.

Q. And to what—from your law enforcement experience, what is the significance of that sticker?

A That's given to people at DMV while there are certain [64] deficiencies or things still due in their registration that are not contraindicative to their still operating the vehicle safely, so they don't get stopped by law enforcement.

Q. So if you were a law enforcement officer and you saw a sticker, 11, and it was the 11th month, November, would you feel authorized to stop the vehicle?

MS. GREEN: Objection; relevance.

THE COURT: Sustained.

MR. WARRINER: No other questions.

Actually, I want to move in my exhibits; I'd ask to move all those in.

THE COURT: A B C and D, received.

(Defense Exhibits A, B, C and D were received in evidence.)

Mr. Hansen, any questions?

MR. HANSEN: I have no questions, Your Honor.

THE COURT: All right. Ms. Green.

MS. GREEN: Yes, Your Honor.

CROSS-EXAMINATION

BY MS. GREEN:

Q. Showing you People's Exhibit C—

MR. HANSEN: People's C?

MS. GREEN: Excuse me; Defense evidence C, actually, where did you find that?

A. You know, it was—I don't recall exactly. It was either in the glove box, on the floorboard or on the seat; I don't recall.

Q. Okay.

A. Of the vehicle.

[65] Q. Defense C indicates that a smog inspection slash certification is required. Do you know what that means?

A. That means they need to take it to a shop to certify that the vehicle is not in violation of the Air Pollution Act and so forth. So it needs a smog certificate.

Q. Were smog certificates required when you were a policeman?

A. I honestly—I don't remember. I think so.

Q. Do you own a car?

A. Yes, I do.

Q. Do you have to register your car with the DMV?

A. Yes, I do.

Q. Do you know, from your own experience, in order to register your car you have to show proof your car has been smogged, and you have insurance?

A. That's correct.

Q. Now, showing you Defendant's evidence A, there's an area on this that says "receipt number." Would you tell me what the receipt number is.

A. Could you show me where it says that? I need new glasses.

Q. This white type, it says, "receipt number, No.," with a line above it?

A. Yeah.

Q. Can you tell me what number is written on that line?

A. No, in this photograph, I can't.

Q. You can't read it?

A. Not in this photograph.

Q. Okay.

MS. GREEN: No further questions.

[66] THE COURT: Mr. Warriner.

MR. WARRINER: Yeah, just a minute.

REDIRECT EXAMINATION

BY MR. WARRINER:

Q. Okay. I'm going to show you Defense Exhibit A; it looks like there are two numbered photographs. Can you read paragraph number one?

A. My arm's not long enough. The department receipt—"the receipt number and receipt number shown on this permit must agree."

Q. All right?

A. "Or"—

Q. Just paragraph one.

A. Okay.

Q. And I'm going to show you Defendant's Exhibit D, and I want you to look at the bottom right-hand corner?

A. Okay.

Q. Is there a stamped number on that bottom right-hand corner?

A. There are stamped numbers, yes.

Q. And on Exhibit A—is there a stamped number on Exhibit A?

A. There are stamped numbers, yes.

Q. Is that the only stamped number on Exhibit A?

A. Correct.

Q. And does that stamp number on Exhibit A correspond to the stamp number on Exhibit D?

A. Yes, it does.

MR. WARRINER: okay, no further questions.

THE COURT: Mr. Hansen.

[67] MR. HANSEN: No questions.

MS. GREEN: No questions.

THE COURT: All right. Thank you. Next witness.

MR. WARRINER: No other witnesses.

THE COURT: Okay.

Counsel want to be heard?

MS. GREEN: Your Honor, I would still—the People's position is that Defendant Brendlin was not detained until the time he was ordered out of the car at gunpoint. At that point there was a warrant for his arrest. And I don't think the defense can make a showing that that arrest, not withstanding the warrant, was unreasonable; therefore I'd ask that the motion to be suppressed be suppressed on that grounds.

On secondary grounds, that you find the defendant is a passenger that has no standing with respect to any of the items that were located in the car or in Ms. Simeroth's waistband or in a cavity search that was conducted at the jail. So I'd ask that you deny it on that grounds.

And if the court doesn't deny it on either one of those grounds, the People would argue that the officer had probable cause to stop the vehicle, at a minimum to inspect whether or not there was a valid registration, number one, as a violation of Vehicle Code Section 4002, to determine whether or not there was a violation of I believe it's 524—I'm not sure; I cited it in my brief.

THE COURT: Not having the rights tabs?

MS. GREEN: Not having the right tabs on the car.

The issue isn't whether or not that car was lawfully [68] registered; the issue is whether or not the officer at the time that he stopped the vehicle had probable cause to believe that a crime may be committed, based on both the information provided to him prior to the stop, where he observed the vehicle at Circle K, and he was informed by dispatch that it had been expired, and with respect to the evidence that is in front of the Court.

Even if that temporary sticker does match that vehicle, it has to be supported by a letter of DMV, and the vehicle's number has to match; and there's no way an officer is going to know that until he stops, contacts the driver and is provided with that information.

MR. WARRINER: Okay. Actually, just to address the last point. It actually says it needs to be supported by the receipt number. It says: "The receipt number shown on the permit must match the receipt number or a letter issue used by DMV. We showed that the receipt numbers match and everything is paid.

THE COURT: I know. How would the officer see it if it was in the glove box or on the floorboard?

MR. WARRINER: The officer—Your Honor, the officer doesn't need to see it. When you have a sticker like this that says 11, the reason they put that on is so you don't go around and get stopped by officers, so you can drive in peace in this country and not be stopped by officers. That's why they put the big number on there.

So the officer was wrong in stopping this vehicle. That's what we assert. And I don't think the officer had any reason to come up there and investigate this number 11 sticker. He—the officer admitted on the stand that there was nothing about the [69] appearance of the sticker that made him think this

was one of these stolen or falsified stickers. There's nothing at all. He had absolutely no reason at all to do that.

He obstructed Mr. Brendlin. He detained Mr. Brendlin. Mr. Brendlin has standing. I cited the cases before, which are mentioned in the prosecutor's brief. Those cases say Mr. Brendlin, the passenger, does have standing to address the issue of a traffic stop.

In any event, Ms. Simeroth is joined in the case and she is the driver. And I don't think there's any assertion that she doesn't have standing; and I think in that sense, Mr. Brendlin can take a backseat to her standing. The court can't supress it against Ms. Simeroth but not to Mr. Brendlin—I don't think the Court can.

THE COURT: The Court can. You don't have standing.

MR. WARRINER: Well, I respectfully disagree with the Court.

THE COURT: If your right of privacy hasn't been invaded, you have no standing and can't supress anything.

MR. WARRINER: That's not—those cases say we do have standing.

THE COURT: Okay. Mr. Hansen.

MR. HANSEN: Well, I don't think there's any question of standing as to Ms. Simeroth.

THE COURT: We don't have to worry about that one.

MR. HANSEN: I think the whole point, just as Mr. Warriner has said, is, DMV is giving a big red sticker so they see a vehicle that appears have registration. That's wrong that that wasn't the case. Otherwise, why would they bother putting the [70] sticker on the car and why would people have to be stopped every time? I don't think that's the intent of the law and I think the officer knew that. He had no reason to stop.

THE COURT: Okay. Number one, this passenger was not detained until the warrant came back and a gun was pointed at him and he was under arrest. That's number one. He was free to leave. And if he had opened the door and got out and taken a hike, then this officer would have had to decide whether he had something less than probable cause to detain him, and then he would have been detained. But he wasn't detained because he never went anywhere; but he had a right to if he wanted to.

Number two, there is a valid stop. This permit is only valid when it is accompanied by a receipt or a letter and that the numbers match. And so I don't have any problem that the vehicle was stopped, especially when the officer had already radioed earlier in the evening and found out that the vehicle was, according to DMV, unregistered, which gave him all the probable cause in the world to wonder where this thing came from, because the car came back unregistered. And of course it was unregistered and it wasn't to be registered until it had its smog.

Next, a passenger does not have standing to supress the items in the vehicle, separate and apart from whether there's probable cause to arrest him or to detain him. So he's put on no standing that he has any interest in any of the items that he seeks to supress, separate and apart from his allegations that he was detained.

I think that's it.

[71] MR. WARRINER: Judge, just—you know, I questioned the officer about the details of his stop and putting on his red lights and the bright light and everything, just to demonstrate to the Court we believe there was a detention.

THE COURT: I know you think there was a detention.

MR. WARRINER: And I think you have to look at it from a reasonable person, what a reasonable person feels, that they're free to go when it's 1:30 in the morning? There's an

armed officer approaching the vehicle with red lights and his vehicle parked behind you. I wouldn't get out of the vehicle and walk away.

THE COURT: He felt secure enough to open the door and close it.

MR. WARRINER: So?

THE COURT: He didn't say, "Officer, may I take a hike."

MS. GREEN: Your Honor, with respect to the motion to continue, I would ask that that trail until Monday afternoon. We have a trial readiness conference, and we may be able to enter some stipulations.

THE COURT: Do you want me to continue the motion to Monday afternoon?

MS. GREEN: Yes.

THE COURT: All right. That would be February 11th at 1:30?

MS. GREEN: Yes, we already have a hearing set that day already.

THE COURT: Thank you. Otherwise, the trial—we're confirming the trial?

MS. GREEN: Correct.

[72] THE COURT: Thank you.

(Proceedings ended.)

* * * *

[73] MONDAY, FEBRUARY 11, 2002

* * * *

The matter of the People of the State of California versus Karen Sue Simeroth and Bruce Edward Brendlin, Defendants, Case Number CRF-01-2703, came on regularly before the Honorable Chris Chandler, Judge of the Superior and Municipal Court, for the County of Sutter, State of California, sitting in Department Three.

The People were represented by Susan Green, Deputy District Attorney.

The Defendant, Karen Sue Simeroth, was present and represented by Norman P. Hansen, Esq., Conflict Counsel, acting as her attorney.

The Defendant, Bruce Edward Brendlin, was personally present and represented by Timothy Warriner, Deputy Public Defender, acting as his counsel.

The following proceedings were then had:

* * * *

THE COURT: People versus Karen Sue Simeroth and Bruce Edward Brendlin, CRF-01-2703.

Counsel, may we have your appearances for the record?

MS. GREEN: Susan Green for the People.

MR. HANSEN: Norman Hansen with Ms. Simeroth.

MR. WARRINER: Tim Warriner with Mr. Brendlin.

THE COURT: Ms. Green, this matter is on for trial readiness conference. What are you anticipating happening this afternoon?

MS. GREEN: I believe that Mr. Brendlin will be [74] pleading guilty to Count One, your Honor. We will need to amend the second prior drug conviction to make it a prison

prior. He would then be receiving the lower term on Count One for three years plus one year for the prison prior for a total of four. Ms. Simeroth would also be pleading to Count One with a promise of probation. I'd like to take Mr. Brendlin's plea first, your Honor.

THE COURT: And, Mr. Warriner, is that what you're anticipating happening this afternoon?

MR. WARRINER: Yes, it is. As to the prison prior, I guess what we're contemplating is the March 24, 1989 transportation.

MS. GREEN: Oh, actually we should do the August 4, 1995, because that's what he's on parole for.

MR. WARRINER: Okay.

MS. GREEN: Manufacturing on August 4, which would be the second one.

THE COURT: Let's just get the details here, and then we'll amend.

Is that what you are agreeing to, Mr. Warriner?

MR. WARRINER: Yes, it is.

THE COURT: And, Mr. Brendlin, you're in agreement?

THE DEFENDANT BRENDLIN: Yes, sir.

THE COURT: And, Mr. Hansen?

MR. HANSEN: Yes, your Honor.

THE COURT: From what's been said, that's what you're anticipating this afternoon?

MR. HANSEN: Yes.

[75] THE COURT: And, Ms. Simeroth, that's what you are prepared to do this afternoon?

THE DEFENDANT SIMEROTH: Yes, sir.

THE COURT: And then Ms. Green has a motion to amend the Information.

Ms. Green, specifically page and line?

MS. GREEN: Page two, go down to line 21, starting with Health and Safety Code, we would then be striking the remainder of that line and line 22 and inserting "and he served a separate term in prison for that conviction and had not remained free of both prison custody and the commission of a new felony offense for a period of five years."

MS. WARRINER: I think that's fine. I think we should cite, though, 667—

MS. GREEN: Penal Code Section 667.5(b).

THE COURT: The district attorney's motion is not opposed, Mr. Warriner. The Court is putting a period after Health and Safety Code at line 21, crossing out the remainder of the original paragraph, has inserted "and he served a separate term in prison for that conviction and did not remain free of both prison custody and the commission of a new felony offense in five years." Up at the top line 15, strike Health and Safety Code Section 11370.2. Prior prison term is inserted, 667.5(b).

Ms. Green, would that cover it?

MS. GREEN: Yes, your Honor.

THE COURT: And, Mr. Warriner, without objection, those amendments have been made on page two for the prior [76] conviction?

And, Mr. Brendlin, you have heard what the attorneys have said. Is that what you are prepared to do this afternoon?

THE DEFENDANT BRENDLIN: Yes.

THE COURT: Mr. Warriner, have you had the opportunity to talk with the charges pending against him and the alleged

prison prior, the possible defenses he might have as to those charges, his Constitutional Rights, and the consequences of his plea, and the admission he's about to make?

MR. WARRINER: Yes.

THE COURT: And you're satisfied that he understands these things?

MR. WARRINER: Yes.

THE COURT: Thank you.

And, Ms. Green, would you please state the factual basis for the plea and the admission if you feel a factual basis for the admission is necessary.

MS. GREEN: On November 27th, 2001, in Sutter County the defendant was in possession of a bilayered solution which contained methamphetamine. Methamphetamine reaction by-products were indicated, and an expert would testify that that solution was in the process of manufacturing methamphetamine. He knew of both its presence and its nature in participating in the manufacturing of that methamphetamine. He had been convicted in—on August 4th, 1995, of manufacturing, a violation of section 11379.6 of [77] the Health and Safety Code and was on parole for that offense when he committed this new offense, your Honor.

MR. WARRINER: So stipulate.

THE COURT: Mr. Brendlin, the district attorney is now going to outline for you the consequences of your plea and your admission. If you understand the question she puts to you, please answer out loud with a yes or no. If you have any questions, please confer with your attorney before answering out loud.

Ms. Green.

MS. GREEN: Sir, do you understand in a few minutes the judge is going to sentence you to four years in State Prison?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: You will be released before the end of your term on parole and parole can last for a period of three years.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: If you violate the terms of parole, you can be sent back to State Prison for each violation.

Do you understand this?

THE DEFENDANT BRENDLIN: Uh-hum.

MS. GREEN: I need yes or no for the court reporter.

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: Because you're going to prison in this case, it's what's known as a prison prior. If you commit another future felony, it can add one year to the sentence [78] of any future felony.

Do you understand that?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: This is what's called a commerical drug offense. In the future if you commit another commercial drug offense, it can add three years to the future prison sentence.

Do you understand that?

THE DEFENDANT BRENDLIN: Yes, I do.

MS. GREEN: If it's charged against you.

You are also not eligible for probation.

Do you understand that?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: Because you have at least two felony convictions, if you commit another felony, regardless of the type of offense, you are presumed ineligible for probation.

Do you understand that?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: If you are on probation or parole in any other matter, a plea in this matter could constitute a violation of that probation or parole.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: You can be sentenced to the maximum term on that probation or parole. Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: If you are not a citizen of the United States, a plea in this case will be used to deport you from [79] this country. Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: If you are not a citizen of the United States, a plea in this case could be used to deny you citizenship should you apply.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes, I do.

MS. GREEN: And should you leave the United States if not a citizen, a plea in this case would deny you re-entry into this country.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: Because you are pleading to a felony, it would be illegal for you to own or have in your custody or control firearms or ammunition.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: That's a felony punishable by up to three years in State Prison.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: Because this is a drug offense, you will be required to register as a drug offender pursuant to Section 11590. Failure to do so is a misdemeanor offense.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: You will be ordered to pay a restitution fine of $200 up to $10,000.

[80] Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: If anyone is out any money due to your actions in this case for like toxic cleanup and such, you could be ordered to pay restitution to them.

Do you understand this?

THE DEFENDANT BRENDLIN: Yes.

MS. GREEN: Your Honor, I believe that covers the consequences.

THE COURT: Thank you, Ms. Green.

Mr. Brendlin, you are entitled to have a jury trial in this case. At a jury trial you couldn't be found guilty of anything unless all twelve jurors were convinced of your guilt beyond a reasonable doubt.

Do you understand that right?

THE DEFENDANT BRENDLIN: Yes.

THE COURT: Do you give up that right?

THE DEFENDANT BRENDLIN: Yes, I do.

THE COURT: If at your jury trial, you are entitled to confront your accusers from the witness stand and cross-examine those accusers through your attorney.

Do you understand those things?

THE DEFENDANT BRENDLIN: Yes, I do.

THE COURT: Do you give up that right?

THE DEFENDANT BRENDLIN: I do.

THE COURT: You are also entitled to present your own defense. You can subpoena your own witnesses and evidence into Court for your defense at no cost to you.

[81] Do you understand your right to present a defense?

THE DEFENDANT BRENDLIN: Yes.

THE COURT: Do you give up that right?

THE DEFENDANT BRENDLIN: Yes, sir.

THE COURT: You have right the to remain silent. At a trial no one could call you as a witness without your consent. Today no one can compel you to plead guilty or give up your right to remain silent.

Do you understand that right?

THE DEFENDANT BRENDLIN: Yes, your Honor.

THE COURT: Do you give up that right?

THE DEFENDANT BRENDLIN: Yes.

THE COURT: Mr. Warriner, join in those waivers?

MR. WARRINER: Yes.

THE COURT: Mr. Brendlin, has anyone threatened you to make this plea and admission?

THE DEFENDANT BRENDLIN: No, sir.

THE COURT: Has anyone promised you anything that hasn't been said in open court since I called your case just a few minutes ago to make you make this plea and admission?

THE DEFENDANT BRENDLIN: No, sir.

THE COURT: Within the last 24 hours have you consumed any alcohol, medication, or drugs?

THE DEFENDANT BRENDLIN: No, sir.

THE COURT: Mr. Brendlin, you are entitled to apply for probation in this case.

Do you understand that right?

THE DEFENDANT BRENDLIN: Yes, sir.

[82] THE COURT: Do you give up that right?

THE DEFENDANT BRENDLIN: Yes, sir.

THE COURT: You are entitled to a written probation report. Do you understand that right?

THE DEFENDANT BRENDLIN: Yes

THE COURT: Do you give up that right?

THE DEFENDANT BRENDLIN: Yes.

THE COURT: Mr. Warriner, this will be a plea of guilty?

MR. WARRINER: Ah, yes.

THE COURT: And, Mr. Brendlin, do you have any questions to ask before I ask you how you plead and if you admit the prison prior?

THE DEFENDANT BRENDLIN: No, your Honor.

THE COURT: Mr. Warriner, do you waive full reading of Count One and the alleged prior pursuant to 667.5?

MR. WARRINER: Yes.

THE COURT: Mr. Brendlin, it is alleged in Count One that on or about November 27th, 2001, you committed a felony

violation of 11379.6(a) of the Health and Safety Code, commonly called manufacturing methamphetamine.

Sir, to that charge how do you plead?

THE DEFENDANT BRENDLIN: Guilty.

THE COURT: Sir, it's alleged that you suffered a prior prison conviction, specifically for 11379.6 of the Health and Safety Code, served time in prison for that conviction, and did not remain free of both prison custody and the commission of a new felony offense for five years.

[83] Sir, do you admit the truth of that allegation?

THE DEFENDANT BRENDLIN: Yes, I do.

THE COURT: Mr. Brendlin, I find that there is a factual basis for your plea and your admission. I find that both of those were made and the waivers of your rights were made knowingly, intelligently, and voluntarily. I accept the plea and admission. I find you to be in violation or guilty rather of 11379.6, and I find that you suffered a prior prison conviction as alleged.

Mr. Warriner, do you waive time for sentencing?

THE DEFENDANT BRENDLIN: Yes, sir.

THE COURT: Do you waive arraignment for sentencing?

MR. WARRINER: Yes.

THE COURT: Is there any legal cause why we shouldn't proceed with pronouncement of judgment and sentencing?

MR. WARRINER: No.

THE COURT: Bruce Edward Brendlin, pursuant to the stipulation, for 11379.6(a) of the Health and Safety Code, your [sic] are sentenced to the lower term of three years in the State's Prison. You will receive pre-sentence custody credits of how long?

MR. WARRINER: 77 plus 38 for 115.

MS. GREEN: That's right.

THE COURT: Mr. Brendlin, do you agree?

THE DEFENDANT BRENDLIN: Yes; I do.

THE COURT: You will receive pre-sentence custody credits of 115 days which is 77 actual time in custody plus 38 days good time/work time.

[84] And for a separate consecutive punishment and sentence for violation of a prior prison—a prior felony for which you did not remain free of custody and served a separate term and having not been free of both prison custody and commission of the new felony for five years, pursuant to 667.5(b) of the Penal Code, Mr. Brendlin is ordered to serve an additional one year.

Mr. Brendlin is ordered to serve—excuse me. To pay the minimum restitution fine of $200 pursuant to 1202.4 of the Penal Code. The Department of Corrections is ordered to withhold that from his prison account pursuant to 2085.5 of the Penal Code. Mr. Brendlin is ordered to pay a $200 restitution fine of $200 pursuant to 1202.45, which is ordered stayed pending his successful completion of his parole. On the motion of the district attorney, all other counts as to Mr. Brendlin are dismissed in the Information.

Mr. Brendlin is advised that he has the right to file a notice of appeal within 60 calendar days of today's date. That must be in writing and it must be filed personally since the Public Defender's Office won't represent him after today. And, finally, the Court of Appeal would appoint an attorney to represent him on appeal.

Now, there is a note here that Mr. Brendlin had a parole hold.

Does any reference need to be made as to that?

MR. WARRINER: I'm requesting.—I believe our discussions earlier in chambers was this would run concurrent to any parole violations. I would ask the Court [85] include that language.

THE COURT: Ms. Green, any—any discussion on that point.

MS. GREEN: No, your Honor. That's fine.

THE COURT: All right. The sentence just imposed will run concurrent with any violation of parole.

Anything further from the People?

MS. GREEN: No.

THE COURT: Anything further from the defense?

MR. WARRINER: No.

THE COURT: That's it for Mr. Brendlin.

* * * *

CERTIFICATE OF GENERAL SHORTHAND REPORTER

State of California)
) ss.
County of Sutter)

I, Lori Beck, hereby certify that I am a General Shorthand Reporter and that at the times and places shown, I recorded verbatim in stenographic writing the proceedings had in the following described action completely and correctly to the best of my ability:

Court: SUTTER COUNTY SUPERIOR COURT

Judge: HONORABLE H. TED HANSEN, COURT-ROOM 2

Case Name: THE PEOPLE OF THE STATE OF CALIFORNIA
-vs-
BRUCE EDWARD BRENDLIN, Defendant

Case Number: CRF-01-2703

Proceedings: Arraignment

Date: Monday, December 31, 2001

Pages: 1 through 3

I further certify that my said stenographic notes have been transcribed into typewriting and that the pages listed above constitute an accurate and complete transcript of all of my said stenographic writing for the dates and matters specified.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted if applicable.

Dated: March 22, 2002

/s/ Lori Beck
LORI BECK, CSR
Certified Shorthand Reporter
License No. 6565

CERTIFICATE OF GENERAL SHORTHAND REPORTER

State of California)
) ss.
County of Sutter)

I Laura M. Blum, hereby certify that I am a General Shorthand Reporter and that at the times and places shown, I recorded verbatim in stenographic writing the proceedings. had in the following described action completely and correctly to the best of my ability:

Court:	Sutter County Superior Court
Case Name:	People v Bruce Edward Brendlin
Case Number:	CRF-01-2703
Date:	January 14, 2001
Action:	Felony Pretrial Conference Judge: Chris Chandler
Page:	4
Date:	February 11, 2002
Action:	Trial Readiness Conference/Entry of Guilty Plea
Pages:	73 through 85

I further certify that my said stenographic notes have been transcribed into typewriting and that the pages listed above constitute and accurate and complete transcript of all of my said stenographic writing for the dates and matters specified.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted if applicable.

Dated: April 1, 2002

/s/ Laura M. Blum
LAURA M. BLUM
Certified Shorthand Reporter
CSR License No. 6093

CERTIFICATE OF GENERAL SHORTHAND REPORTER

State of California)
) ss.
County of Sutter)

I, Kimberly E. Durso, hereby certify that I am a General Shorthand Reporter and that at the times and places shown, I recorded verbatim in stenographic writing the proceedings had in the following described action completely and correctly to the best of my ability:

Court.: SUTTER COUNTY SUPERIOR COURT.

Judges: HONORABLE H. TED HANSEN, COURTROOM 2
HONORABLE CHRIS CHANDLER, COURTROOM 3
HONORABLE ANN RUTHERFORD, COURTROOM 2

Case Name: THE PEOPLE OF THE STATE OF CALIFORNIA
-vs-
BRUCE EDWARD BRENDLIN, Defendant

Case Number: CRF-01-2703

Action: 1538.5 Motion

Dates: FRIDAY, FEBRUARY 8, 2002 pages 5-72

I further certify that my said stenographic notes have been transcribed into typewriting and that the pages listed above constitute an accurate and complete transcript of all of my said stenographic writing for the dates and matters specified.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted if applicable.

Dated: April 2, 2002. /s/ Kimberly E. Urso
KIMBERLY E. URSO,
CSR No. 11372

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sutter)

[Filed 1/27/04]

C040754
(Super. Ct. No. CRF012703)

THE PEOPLE,
Plaintiff and Respondent,

v.

BRUCE EDWARD BRENDLIN,
Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Sutter County, Chris Chandler, J. Reversed.

James F. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, John G. McLean and Clifford E. Zall, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Bruce Edward Brendlin was the passenger in a car stopped by an officer who had a hunch that the temporary operating permit displayed in the window might not belong to the car and, thus, it was being unlawfully operated as an unregistered vehicle. As a result of the vehicle stop, the officer discovered that a warrant had been issued for defendant's arrest. Searches of defendant and the car revealed evidence of drug offenses.

Following the denial of his motion to suppress evidence (Pen. Code, § 1538.5), defendant entered a negotiated plea of guilty to manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)) and admitted having served a prior prison term (Pen. Code, § 667.5, subd. (b)). He was sentenced to a term of four years in state prison.

On appeal, defendant claims the trial court erred in denying his suppression motion. We agree. In reaching this conclusion, we reject the holdings in three Court of Appeal opinions which have concluded that a passenger in another person's car cannot contest the validity of a traffic stop of the vehicle. As we will explain, we agree with the majority view that a passenger can challenge the vehicle stop. We further conclude that the stop in this case was unlawful since the facts and inferences therefrom were insufficient to support a reasonable suspicion that the temporary permit was not for that car. Hence, the evidence seized from defendant and the car should have been suppressed because it was the product of the unlawful stop. Accordingly, we shall reverse the judgment.

FACTS

At approximately 1:30 a.m. on November 27, 2001, Deputy Sheriff Robert Brokenbrough saw that a Buick parked in a Circle K market had an expired registration tag. Brokenbrough "ran the plates and they came back expired." Dispatch told him that the expiration date was September 27, 2001, but that an application was "in process" for renewal of the registration.

Brokenbrough later saw the Buick being driven on Franklin Road. This time he noticed that, in the back window of the car, there was a red Department of Motor Vehicles temporary operating permit with the number "11," representing the month of November. The temporary permit was good until the last day of November 2001.

Based upon his 11 years of experience as a peace officer, Brokenbrough knew that drivers occasionally "remove [such temporary permits] and switch them around on vehicles" in order to avoid fines for expired registrations. Even though there was nothing unusual about the temporary permit on the Buick, e.g., the way it was affixed, to make him believe that it did not belong on the Buick, Brokenbrough "[m]ade a traffic stop" to "verify whether or not that sticker belonged to that vehicle."

Brokenbrough asked both the driver, Karen Simeroth, and the passenger, defendant, to identify themselves. Simeroth handed Brokenbrough her driver's license. Defendant said his name was Bruce Brown; however, from prior contacts, the officer recognized him as being one of the Brendlin brothers, either Scott or Bruce.

Believing that one of the Brendlin brothers was "a parolee at large," Brokenbrough "put Bruce Brendlin's name over the radio." Another officer responded, stating he thought the suspect was "absconding" on parole. When dispatch "confirmed that [defendant] was a parolee at large," he "was taken into custody at gunpoint."[1] A syringe cap was seized from defendant during a search incident to his arrest. A pat down search of Simeroth revealed that she was possessing two syringes, one without a cap, and a bag containing a green leafy substance. She was placed under arrest.

During a search of the Buick, officers seized various items apparently related to the manufacturing of methamphetamine.

DISCUSSION

In denying defendant's motion to suppress evidence, the trial court found that (1) as just a passenger in the Buick,

---

[1] Evidence established that, at the request of his parole agent, defendant's parole had been suspended and a no bail warrant had been issued for his arrest.

defendant was not detained until he was arrested when Deputy Sheriff Brokenbrough confirmed that he was a parolee at large, (2) the vehicle stop was lawful because the officer had sufficient cause to believe the car was unregistered, and (3) since defendant was merely a passenger in the Buick, he lacked "standing" to seek suppression of the items seized during a search of the car.

In reviewing a ruling on a motion to suppress, we "defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal. 4th 354, 362.) "Pursuant to article I, section 28, of the California Constitution, a trial court may exclude evidence under Penal Code section 1538.5 only if exclusion is mandated by the federal Constitution." (*People v. Banks* (1993) 6 Cal. 4th 926, 934.)

Asserting he was detained when Deputy Sheriff Brokenbrough stopped the Buick, defendant claims that the detention which led to the seizure of evidence was unlawful because the facts known to the officer did not give rise to a reasonable suspicion of criminal activity. In defendant's view, he had a reasonable expectation of privacy in the car and, therefore, he had "standing" to challenge its search.

The People retort that defendant "lacks standing to complain about the items seized from the vehicle," and "as to evidence seized from his person, he was not detained until ordered from the car . . . [a]t [a] point [when] the officer had probable cause to detain [him]."

For reasons to follow, we conclude (1) defendant can challenge the stop of the Buick, (2) the stop was unlawful because the facts and inferences therefrom were insufficient to support a reasonable suspicion that the temporary permit was not for the Buick, and (3) the evidence seized from

defendant and the Buick should have been suppressed because it was the product of the unlawful stop.

Long ago, the United States Supreme Court emphasized that "'Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.' [Citations.] A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. [Citation.] And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment [citation], it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections. [Citation.]" (*Rakas v. Illinois* (1978) 439 U.S. 128, 133-134, fn. omitted [58 L.Ed.2d 387, 394-395].) Pointing out the "substantial social cost" of applying the exclusionary rule to keep relevant and reliable evidence from the trier of fact, and to deflect "the search for truth at trial," the Supreme Court noted the importance of limiting the class of persons who may invoke the rule. (*Id.* at pp. 137, 138 [58 L.Ed.2d at p. 397].)

Courts used to refer to this question as "standing" to raise a Fourth Amendment violation. However, since *Rakas v. Illinois, supra*, 439 U.S. 128 [58 L.Ed.2d 387]), "the United States Supreme Court has largely abandoned use of the word 'standing' in its Fourth Amendment analyses." (*People v. Ayala* (2000) 23 Cal.4th 225, 254, fn. 3.) "[T]he better analysis forthrightly focuses on the extent of a particular defendant's rights under the Fourth Amendment, rather than on any theoretically separate, but invariably intertwined concept of standing." (*Rakas v. Illinois, supra*, 439 U.S. at p. 139 [58 L.Ed.2d at p. 398].)

Thus, the issue is whether the defendant "is asserting his own legal rights and interests rather than basing his claim for relief upon the rights of third parties." (*Rakas v. Illinois,*

supra, 439 U.S. at p. 139 [58 L.Ed.2d at p. 398].) Stated another way, "the question is whether the challenged search or seizure violated the Fourth Amendment rights of a criminal defendant who seeks to exclude the evidence obtained during it. That inquiry in turn requires a determination of whether the disputed search and seizure has infringed an interest of the defendant which the Fourth Amendment was designed to protect." (*Id.* at p. 140 [58 L.Ed.2d at p. 399].)

There is a split of authority as to whether a passenger can challenge the legality of a traffic stop of the car.

One line of cases holds that a traffic stop constitutes a detention, or seizure, of not only the driver, but of passengers as well. (E.g., *People v. Bell* (1996) 43 Cal.App.4th 754, 765; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1460; *U.S. v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095; *U.S. v. Kimball* (1st Cir. 1994) 25 F.3d 1, 5; *U.S. v. Eylicio-Montoya* (10th Cir. 1995) 70 F.3d 1158, 1164; *U.S. v. Roberson* (5th Cir. 1993) 6 F.3d 1088, 1091.) The rationale of this majority view (see *People v. Bell, supra*, 43 Cal.App.4th at pp. 761-765) is that everyone in the vehicle is detained because the traffic stop "'significantly curtails the "freedom of action" of the driver and the passengers . . . .'" (*Id.* at p. 761, quoting *Berkemer v. McCarty* (1984) 468 U.S. 420, 436 [82 L.Ed.2d 317, 332]; see also *People v. Grant, supra*, 217 Cal.App.3d at p. 1458 [a passenger's "personal liberty and freedom of travel are intruded upon by" the stop]); *U.S. v. Twilley, supra*, 222 F.3d at p. 1095 [a "passenger's interests are affected when [the] vehicle is stopped"]; *U.S. v. Kimball, supra*, 25 F.3d at p. 5 ["a stop affects an occupant's interest in freedom from random, unauthorized, investigatory seizures"].)

Other decisions hold that a routine traffic stop does not subject a passenger to a seizure within the meaning of the Fourth Amendment. (E.g., *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373-1374; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367-1369; *People v. Fisher* (1995) 38

Cal.App.4th 338, 343-344.) The rationale of this minority view is that the traffic stop is intended to restrain the freedom of movement of only the driver; the passenger, whose presence in the car "is merely fortuitous," does not submit to the show of authority and, without more, is free to leave after the vehicle stops. (*People v. Cartwright, supra*, 72 Cal. App.4th at pp. 1367-1368; see also *People v. Castellon, supra*, 76 Cal.App.4th at p. 1374; *People v. Fisher, supra*, 38 Cal.App.4th at pp. 343-344.)

In our view, a common sense application of Fourth Amendment principles leads to the conclusion that a traffic stop constitutes at least a momentary seizure of everyone in the car. Certainly, it must be said that the freedom of action of the passenger, as well as the driver, is significantly curtailed by an officer's act of making the driver stop the car. (See *California v. Hodari D.* (1991) 499 U.S. 621, 625-626 [113 L.Ed.2d 690, 697] [a "seizure" within the meaning of the Fourth Amendment occurs when a person yields to an officer's use of physical force, or show of authority, and the person's liberty is actually restrained in some way].) Whether a passenger remains detained thereafter depends on whether, under the circumstances, a reasonable person would feel free to leave while the officer deals with the driver. (*United States v. Drayton* (2002) 536 U.S. ___, ___ [153 L.Ed.2d 242, 251].) But the fact remains that, at the time of the initial traffic stop, the passenger is seized within the meaning of the Fourth Amendment. (See *California v. Hodari D., supra*, 499 U.S. at pp. 625-626 [113 L.Ed.2d at p. 697].) By no stretch of the imagination can it be said that the passenger is free to go from the point at which the driver yields to the officer's show of authority and the time that the seizure occurs when the car actually stops.

Consequently, although a passenger who asserts no property or possessory interest in the car "would not normally have a legitimate expectation of privacy" in the vehicle in

order to contest its seizure and search (*Rakas v. Illinois, supra*, 439 U.S. at pp. 148-149 [58 L.Ed.2d at p. 404]), the passenger can challenge the legality of the traffic stop because the passenger is asserting his or her own legal right to be free from an unlawful seizure. (See *Berkemer v. McCarty, supra*, 468 U.S. at p. 436 [82 L.Ed.2d at p. 332]; *Colorado v. Bannister* (1980) 449 U.S. 1, 4, fn. 3 [66 L.Ed.2d 1, 4]; *Delaware v. Prouse* (1979) 440 U.S. 648, 653 [59 L.Ed.2d 660, 667].)

So it is in this case. As a passenger in the car stopped by Deputy Sheriff Brokenbrough, defendant can challenge the legality of the stop.

According to defendant, the stop was unlawful because "there were no facts to support [a reasonable] suspicion the Vehicle Code was being violated." We agree.

"An investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." (*United States v. Cortez* (1981) 449 U.S. 411, 417, fn. omitted [66 L.Ed.2d 621, 628]; *People v. Souza* (1994) 9 Cal.4th 224, 231.) In other words, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, [objectively] warrant [a reasonable suspicion that the suspect is, or is about to be, engaged in a crime]." (*Terry v. Ohio* (1968) 392 U.S. 1, 21 [20 L.Ed.2d 889, 906].) Such facts may include a "consideration of the modes or patterns of operation of certain kinds of lawbreakers." (*United States v. Cortez, supra*, 449 U.S. at p. 418 [66 L.Ed.2d at p. 629].) "The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith." (*People v. Loewen* (1983) 35 Cal.3d 117, 123.)

Here, the only basis for the traffic stop was Deputy Sheriff Brokenbrough's belief that the Buick's driver might be operating the car in violation of Vehicle Code section 4000, which provides in pertinent part that no person shall drive upon a highway, including a public street, any motor vehicle "unless it is registered and the appropriate fees have been paid . . . ." But the facts known to the officer did not warrant a reasonable suspicion of such criminal activity. Before stopping the vehicle on November 27, Brokenbrough ran a check on the registration and was informed that it had expired but that an application was in process to renew the registration. Also before stopping the vehicle, he observed that a temporary operating permit with the number 11, representing the month of November, was in the back window. Although the temporary permit was good until the end of November and authorized defendant to drive the Buick on a public street (Veh. Code, § 4606), Brokenbrough knew from past law enforcement experience that some drivers "remove [temporary permits] and switch them around on vehicles" in order to avoid fines for expired registrations. However, he did not see anything unusual about the way the temporary permit was affixed to the Buick which would lead to the conclusion that it did not belong on the car. Indeed, he knew a registration renewal was in process for the Buick, which indicated the temporary permit was issued for it. Nevertheless, Brokenbrough stopped the Buick to verify whether the temporary permit was issued for that vehicle.

Because Deputy Sheriff Brokenbrough had at most a hunch that the driver of the Buick was operating an unregistered vehicle in violation of Vehicle Code section 4000, he acted unreasonably and unlawfully in stopping the vehicle for the purpose of determining whether the temporary operating permit belonged to the Buick. (Cf. *People v. Butler* (1988) 202 Cal.App.3d 602, 606-607 [an officer may not stop a vehicle simply for the purpose of determining whether its windows "were made of illegally tinted, rather than legally

tinted, safety glass"; unless the officer is aware of articulable facts that suggest the tinting is illegal, "the detention rests upon the type of speculation which may not properly support an investigative stop"].)

But for the unlawful vehicle stop, Deputy Sheriff Brokenbrough would not have discovered and seized the evidence against defendant. Consequently, the trial court erred in not suppressing the evidence "under the 'fruit of the poisonous tree' doctrine." (*U.S. v. Kimball, supra*, 25 F.3d at p. 6, citing *Wong Sun v. United States* (1963) 371 U.S. 471, 484-485 [9 L.Ed.2d 441, 453-454]; *People v. Butler, supra*, 202 Cal.App.3d at p. 607.)

DISPOSITION

The judgment is reversed.

SCOTLAND, P.J.

We concur:

BLEASE, J.

ROBIE, J.

IN THE SUPREME COURT OF CALIFORNIA
Court of Appeal
Third Appellate District

[Filed APR 14, 2004]

No. C040754, S123133
En Banc

THE PEOPLE,
Plaintiff and Respondent,

v.

BRUCE EDWARD BRENDLIN,
Defendant and Appellant.

Petition for review GRANTED.

George
Chief Justice

Kennard
Associate Justice

Baxter
Associate Justice

Werdegar
Associate Justice

Chin
Associate Justice

Brown
Associate Justice

Moreno
Associate Justice

IN THE SUPREME COURT OF CALIFORNIA
Court of Appeal
Third Appellate District

[Filed MAY 12, 2004]

No. C040754, S123133
En Banc

THE PEOPLE,
Plaintiff and Respondent,

v.

BRUCE EDWARD BRENDLIN,
Defendant and Appellant.

The issues to be briefed and argued in this case are the following: (1) Was defendant, as a passenger in a vehicle subjected to a traffic stop, thereby "detained" for purposes of the Fourth Amendment, thus allowing him to contest the legality of the stop? (2) Could the vehicle be stopped on reasonable suspicion that it was being operated while unregistered, in violation of the Vehicle Code, when it exhibited an expired license plate registration tag, but also displayed what appeared from a distance to be a current temporary registration permit?

GEORGE
Chief Justice

IN THE SUPREME COURT OF CALIFORNIA

[Filed 6/29/06]

S123133

Ct.App. 3 C040754

Sacramento County
Super. Ct. No. CRF012703

THE PEOPLE,
Plaintiff and Respondent,

v.

BRUCE EDWARD BRENDLIN,
Defendant and Appellant.

When a peace officer directs the driver of a vehicle to pull over for a traffic stop but, in effecting the stop, gives no indication that the passenger of the vehicle is the focus of the officer's investigation or show of authority, is the passenger subjected to a "seizure" within the meaning of the Fourth Amendment? This is a question that has divided courts inside and outside this state. We find that the passenger, whose progress is momentarily stopped as a practical matter, is not seized as a constitutional matter in the absence of additional circumstances that would indicate to a reasonable person that he or she was the subject of the peace officer's investigation or show of authority. We therefore reverse the judgment of the Court of Appeal, which (1) held that the passenger was automatically seized as a result of the traffic stop, (2) determined that the traffic stop was unlawful, and (3) suppressed the evidence of methamphetamine manufacturing found in the car and on defendant's person as the fruit of the illegal seizure.

BACKGROUND

Around 1:40 a.m. on November 27, 2001, Sutter County Sheriff's Deputy Robert Charles Brokenbrough effected a traffic stop of a brown 1993 Buick Regal with expired registration tabs on Franklin Avenue in Yuba City. Prior to the stop, Deputy Brokenbrough confirmed through dispatch that the car's registration had expired two months earlier but that an application was "in process" to renew the registration. Although Deputy Brokenbrough observed that a temporary operating permit with the number "11" (indicating an expiration date at the end of November) had been taped to the rear window, he could not determine from his vantage point whether the permit matched the vehicle and decided to stop the Buick to investigate further.

Deputy Brokenbrough approached the driver's side of the Buick and asked the driver, Karen Simeroth, for her driver's license. He also asked defendant, the passenger, to identify himself, since he recognized defendant as one of the Brendlin brothers, Scott or Bruce, and recalled that one of them had absconded from parole supervision. During the inquiry, Deputy Brokenbrough observed receptacles in the car containing substances used in the production of methamphetamine. In response to the deputy's inquiry, defendant falsely identified himself as Bruce Brown. The deputy returned to his patrol vehicle and verified that Bruce Brendlin was a parolee at large and had an outstanding no-bail warrant for his arrest. During this period, defendant opened and then closed the passenger door of the Buick.

After requesting backup, Deputy Brokenbrough pointed his weapon at defendant, ordered him out of the car, and placed him under arrest for the parole violation. The entire episode, from the time Deputy Brokenbrough asked Simeroth for her driver's license to his discovery that defendant had an outstanding warrant, lasted a couple of minutes.

Police found an orange syringe cap on defendant's person during a search incident to arrest. They found two hypodermic needles (one of which was missing a syringe cap), two baggies containing a total of 12.43 grams of marijuana, and a baggie containing 0.46 grams of methamphetamine on Simeroth's person during a patsearch and a subsequent search incident to her arrest. Materials used in manufacturing methamphetamine were found in the back seat of the Buick.

After a hearing on defendant's motion to suppress, the superior court held that defendant had not been seized within the meaning of the Fourth Amendment until Deputy Brokenbrough ordered him out of the car at gunpoint and placed him under arrest: "He was free to leave. And if he had opened the door and got out and taken a hike, then this officer would have had to decide whether he had something less than probable cause to detain him, and then he would have been detained. But he wasn't detained because he never went anywhere; but he had a right to if he wanted to." The court determined next that even if defendant had been seized at an earlier point, the traffic stop was lawful; even if the stop had been unlawful, defendant, as a passenger, lacked standing[1] to suppress the items seized from the Buick.

Following the denial of his motion to suppress, defendant pleaded guilty to manufacturing methamphetamine (Health & Saf. Code, § 11379.6, subd. (a)) and admitted a prior prison

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[1] The United States Supreme Court has largely abandoned use of the word "standing" in its Fourth Amendment analysis. (See *Minnesota v. Carter* (1998) 525 U.S. 83, 87-88.) "It did so without altering the nature of the inquiry: whether the defendant, rather than someone else, had a reasonable expectation of privacy in the place searched or the items seized." (*People v. Ayala* (2000) 23 Cal.4th 225, 254, fn. 3.) We have embraced the high court's formulation and no longer analyze this substantive issue as one of standing. (*Ibid.*; *People v. Valdez* (2004) 32 Cal.4th 73, 121, fn. 24.)

term enhancement (Pen. Code, § 667.5, subd. (b)). He was sentenced to four years in prison.

The Court of Appeal reversed in a published opinion. It held that a traffic stop necessarily results in a detention (and, hence, a seizure (*People v. Glaser* (1995) 11 Cal.4th 354, 363)) of both the driver and the passengers, rejecting the analysis and holdings of *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373-1374; *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1367-1369; and *People v. Fisher* (1995) 38 Cal.App.4th 338, 343-344. The Court of Appeal further found that the stop was unlawful in that Deputy Broken- brough, who knew that the vehicle's application to renew its registration was in process and who had seen the temporary permit in the rear window, had "at most a hunch" that "the temporary operating permit displayed in the window might not belong to the car and, thus, it was being unlawfully operated as an unregistered vehicle." The court ruled that the evidence seized from defendant as well as from the Buick should have been suppressed.

We granted review, limited to (1) whether defendant, as a passenger in a vehicle subjected to a traffic stop, was seized within the meaning of the Fourth Amendment; and (2) whether reasonable suspicion exists that a car is unregistered when it exhibits an expired registration tab on its license plate but displays what appears to be a valid temporary operating permit in its rear window.

DISCUSSION

"In ruling on a motion to suppress, the trial court must find the historical facts, select the rule of law, and apply it to the facts in order to determine whether the law as applied has been violated. (*People v. Ayala* (2000) 24 Cal.4th 243, 279 [99 Cal.Rptr.2d 532, 6 P.3d 193].) We review the court's resolution of the factual inquiry under the deferential substantial evidence standard. The ruling on whether the applic-

able law applies to the facts is a mixed question of law and fact that is subject to independent review. (*Ibid.*)" (*People v. Ramos* (2004) 34 Cal.4th 494, 505.)[2] In evaluating whether the fruits of a search or seizure should have been suppressed, we consider only the Fourth Amendment's prohibition on unreasonable searches and seizures. (*People v. Carter* (2005) 36 Cal.4th 1114, 1141.) "The proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure." (*Rakas v. Illinois* (1978) 439 U.S. 128, 131, fn. 1.)

Prior to the vehicle stop here, Deputy Brokenbrough noticed that the registration tabs on the Buick's license plate were expired. However, he also observed a current temporary operating permit in the car's rear window and had received radio confirmation that an application for renewal of the

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[2] State courts and the lower federal courts are divided as to the appropriate standard of review of a finding that a seizure has or has not occurred. Many courts hold that this is a question of law or a mixed question of law and fact subject to de novo review. (*U.S. v. Smith* (1st Cir. 2005) 423 F.3d 25, 31, fn. 4; *id.* at p. 36 & fn. 9 (dis. opn. of Lynch, J.) [citing cases from the Second, Third, Sixth, Eight, Tenth, and District of Columbia Circuits]; *LaDuke v. Nelson* (9th Cir. 1985) 762 F.2d 1318, 1327; accord, *State v. Kachanian* (Hawai'i Ct.App. 1995) 896 P.2d 931, 938; *State v. Harris*, (Minn. 1999) 590 N.W.2d 90, 98; *State v. Jason L.* (N.M. 2000) 2 P.3d 856, 863; *State v. Carter* (Utah Ct.App. 1991) 812 P.2d 460, 465, fn. 3; *McGee v. Com.* (Va.Ct.App. 1997) 487 S.E.2d 259, 261; *State v. Thorn* (Wn. 1996) 917 P.2d 108, 111; *State v. Garcia* (Wis.Ct.App. 1995) 535 N.W.2d 124, 126.) Other courts hold that this is a question of fact subject to review for substantial evidence or clear error. (*U.S. v. Mask* (5th Cir. 2003) 330 F.3d 330, 335; *U.S. v. Wilson* (4th Cir. 1991) 953 F.2d 116, 121; *U.S. v. Teslim* (7th Cir. 1989) 869 F.2d 316, 321; accord, *Lindsay v. State* (Alaska Ct.App. 1985) 698 P.2d 659, 661; *State v. Hill* (Conn. 1996) 675 A.2d 866, 871; *State v. Raker* (Fla.Dist. Ct.App. 2004) 883 So.2d 887, 888-889.) Because the parties here do not address the issue—and because our decision would be the same under either standard—we find it unnecessary to resolve the conflict. (See *U.S. v. Boone* (5th Cir. 1995) 67 F.3d 76, 77, fn. 1.)

vehicle's registration was indeed in process. Conceding that "[a] vehicle with an application for renewal of expired registration would be expected to have a temporary operating permit," the Attorney General no longer argues that Deputy Brokenbrough had articulable suspicion the Buick's registration was invalid. The Attorney General argues instead that defendant has no entitlement to suppression of the evidence uncovered during the traffic stop because he, as a passenger, was not seized within the meaning of the Fourth Amendment until Deputy Brokenbrough ordered him out of the car at gunpoint and arrested him under the outstanding no-bail warrant, which provided lawful cause for the seizure. Defendant, on the other hand, argues that he was seized at the moment the driver submitted to the show of official authority and stopped the car, which preceded the deputy's discovery of the outstanding warrant.[3]

It is well settled that the driver of a vehicle that is the subject of a traffic stop is seized within the meaning of the Fourth Amendment. (*Whren v. United States* (1996) 517 U.S. 806, 809-810.) Neither this court nor the United States Supreme Court, however, has yet decided whether the driver's submission to the show of authority results in a seizure of the *passenger*. A majority of courts, including several federal circuit courts and some state courts, have embraced a per se rule that the passenger is seized at the moment the driver submits to the official show of authority. (E.g., *U.S. v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095; *U.S. v. Eylicio-Montoya* (10th Cir. 1995) 70 F.3d 1158, 1163-1164; *U.S. v. Kimball* (1st Cir. 1994) 25 F.3d 1, 5; *U.S. v.*

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[3] Defendant concedes that, as a mere passenger, his Fourth Amendment rights were not violated by the search of his codefendant's vehicle. (*Rakas v. Illinois, supra*, 439 U.S. at pp. 133, 148; accord, *People v. Valdez, supra*, 32 Cal.4th at p. 122.) He claims instead that suppression of the incriminating evidence found in the car is required because it was the fruit of an unlawful seizure of his person.

Roberson (5th Cir. 1993) 6 F.3d 1088, 1091; *U.S. v. Powell* (7th Cir. 1991) 929 F.2d 1190, 1195; *State v. Hernandez* (Fla.Dist.Ct.App. 1998) 718 So.2d 833, 836; *People v. Bunch* (Ill. 2003) 796 N.E.2d 1024, 1029; *State v. Eis* (Iowa 1984) 348 N.W.2d 224, 226; *State v. Carter* (Ohio 1994) 630 N.E.2d 355, 360; *Josey v. State* (Tex.Crim.App. 1998) 981 S.W.2d 831, 837-838; see also 6 La Fave, Search and Seizure (4th ed. 2004) § 11.3(e), pp. 194-195, fn. 277 [citing cases].) Other courts, reasoning that the passenger in a vehicle subject to a traffic investigation is stopped for practical purposes but not by virtue of the show of official authority, hold that the passenger is not seized for Fourth Amendment purposes. (E.g., *People v. Jackson* (Colo. 2002) 39 P.3d 1174, 1184-1186; *State v. Mendez* (Wn. 1999) 970 P.2d 722, 729; see also 6 La Fave, Search and Seizure, *supra*, § 11.3(e), p. 193, fn. 272 [citing cases].)

This division of authority is reflected in the courts of our own state. Some courts agree with defendant that the interference with the passenger's freedom of movement occasioned by the traffic stop constitutes a seizure. (*People v. Bell* (1996) 43 Cal.App.4th 754, 765; *People v. Hunt* (1990) 225 Cal.App.3d 498, 505; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1457-1458.) Other courts agree with the Attorney General that although the driver must submit to the officer's instructions, the passenger is free to disregard the police and go about his or her business, and that the incidental restriction of the passenger's freedom of movement is therefore not a seizure. (*People v. Castellon, supra*, 76 Cal.App.4th at p. 1374; *People v. Cartwright, supra*, 72 Cal.App.4th at p. 1369 (*Cartwright*); *People v. Fisher, supra*, 38 Cal.App.4th at p. 344; *People v. Gonzalez* (1992) 7 Cal.App.4th 381, 384.)

At the heart of this debate lies the definition of a seizure in the Fourth Amendment's prohibition on "unreasonable searches and seizures." Justice Stewart's opinion in *United States v. Mendenhall* (1980) 446 U.S. 544, 554, which has

been adopted by the court in subsequent cases (e.g., *Michigan v. Chesternut* (1988) 486 U.S. 567, 573), states that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." (Fn. omitted.) The high court subsequently made clear that this test "states a *necessary*, but not a *sufficient*, condition for seizure." (*California v. Hodari D.* (1991) 499 U.S. 621, 628 (*Hodari D.*).) That is, there must also be an actual taking into custody, whether by the application of physical force or by submission to the assertion of authority. (*Id.* at p. 626.) The court has also cautioned against an undue focus on the fact that government action caused some restriction on an individual's freedom of movement: "'a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement . . . , nor even whenever there is a governmentally caused and *desired* termination of an individual's freedom of movement . . . , but only when there is a governmental termination of freedom of movement *through means intentionally applied.*'" (*County of Sacramento v. Lewis* (1998) 523 U.S. 833, 844, quoting *Brower v. County of Inyo* (1989) 489 U.S. 593, 596-597.) Finally, the court has reminded us that where the individual may not feel free to leave for reasons *independent* of the police conduct—such as a passenger on a bus that is scheduled to depart shortly—the proper inquiry is "whether, taking into account all of the circumstances surrounding the encounter, the police conduct would 'have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.'" (*Florida v. Bostick* (1991) 501 U.S. 429, 437; accord, *People v. Celis* (2004) 33 Cal.4th 667, 673.)

It is passing strange, then, that defendant focuses so little attention on the definition of a seizure. Defendant (like the Court of Appeal below and the other cases embracing the majority view) instead advances an argument that rests on

two other foundations: (1) dicta from United States Supreme Court decisions; and (2) the fact that a traffic stop curtails the freedom of movement of the passenger as well as the driver.

Although defendant concedes that the high court has not decided whether a passenger is necessarily seized by virtue of a traffic stop, he asserts that dicta from the high court has "strongly hinted" in that direction. In *Delaware v. Prouse* (1979) 440 U.S. 648, 653, for example, the court observed that "stopping an automobile and detaining its occupants constitute a 'seizure' within the meaning of [the Fourth] Amendment[], even though the purpose of the stop is limited and the resulting detention quite brief." (See also *Berkemer v. McCarty* (1984) 468 U.S. 420, 436-437 [quoting *Prouse*].) In *Colorado v. Bannister* (1980) 449 U.S. 1, 4, footnote 3, the court reiterated that "[t]here can be no question that the stopping of a vehicle and the detention of its occupants constitute a 'seizure' within the meaning of the Fourth Amendment," citing *Prouse*. There is no debate here, though, whether a traffic stop results in a seizure. The issue, rather, is *who* (or what) has been seized. Inasmuch as *Bannister* and *Berkemer* involved the driver of the vehicle (*Bannister, supra*, 449 U.S. at p. 4; *Berkemer, supra*, 468 U.S. at p. 423) and *Prouse*, according to the opinion of the state supreme court, involved the owner and "operator" of the vehicle (*Prouse, supra*, 440 U.S. at p. 650, fn. 1), none of these cases is particularly illuminating on the status of a mere passenger.

Defendant, like the courts embracing the majority view, also relies on the observation in *Berkemer v. McCarty, supra*, 468 U.S. at page 436, that "a traffic stop significantly curtails the 'freedom of action' of the driver and the passengers, if any, of the detained vehicle." It is important to recognize, however, that *Berkemer*'s observation was made in the context of whether a motorist detained pursuant to a traffic stop was in custody for purposes of the *Fifth* Amendment. (*Id.* at p. 435.) Whether a person is in custody for purposes of

the Fifth Amendment is an inquiry distinct from whether a person has been seized within the meaning of the Fourth Amendment. (*U.S. v. Sullivan* (4th Cir. 1998) 138 F.3d 126, 131 ["The 'custody' that implicates the *Miranda* rule is conceptually distinct from a seizure implicating the Fourth Amendment"]; *U.S. v. Smith* (7th Cir. 1993) 3 F.3d 1088, 1097 [the determination of custody under the Fifth Amendment requires "a completely different analysis" from that under the Fourth Amendment].) Indeed, as the high court has emphasized, "'a governmentally caused termination of an individual's freedom of movement'" does not necessarily establish that a seizure under the Fourth Amendment has occurred. (*County of Sacramento v. Lewis, supra*, 523 U.S. at p. 844.) A police detention of an orderly pushing a wheelchair-bound individual or a detention of a parent pushing a child in a stroller may well incidentally curtail the freedom of action of the passengers who are dependent on those adults. The detention of the orderly or parent will also, to use the dissent's phrasing, "interrupt [the] journey" (dis. opn., *post*, at p. 1) of the wheelchair or the stroller. But it is absurd to say that either passenger has thereby been seized within the meaning of the Fourth Amendment.

The cases embracing the majority view also assert that "[n]o principled basis exists for distinguishing between the privacy rights of passengers and drivers in a moving vehicle. When the vehicle is stopped they are equally seized; their freedom of movement is equally affected." (*State v. Eis, supra*, 348 N.W.2d at p. 226; see also *People v. Bell, supra*, 43 Cal.App.4th at p. 763.) In reality, though, the passenger is not subject to the same restraints as the driver. The driver is obliged to remain at the scene until the completion of the officer's investigation. "[T]he passenger is stopped too, but only coincidentally." (*People v. Jackson, supra*, 39 P.3d at p. 1185.) Absent further direction from the officer effecting the stop (see *Maryland v. Wilson* (1997) 519 U.S. 408, 410) or some indication that the passenger is the subject of the

officer's investigation or show of authority, the passenger is free to ignore the police presence and go about his or her business. Alternatively, the passenger may choose to wait until the investigation of the driver is completed. In either case, "it is this element of choice that distinguishes the passenger's circumstance from the driver's, for the driver has been seized and is therefore not free to go." (*Jackson, supra*, at p. 1185.) The fact that defendant's freedom of movement was momentarily curtailed by the traffic stop thus does not determine whether he was seized. To answer that question we must return to the high court's definition of a "seizure."

A seizure occurs when the police, by the application of physical force or show of authority, seek to restrain the person's liberty (*Terry v. Ohio* (1968) 392 U.S. 1, 19, fn. 16; *County of Sacramento v. Lewis, supra*, 523 U.S. at p. 844); the police conduct communicated to a reasonable innocent person that the person was not free to decline the officer's request or otherwise terminate the encounter (*Florida v. Bostick, supra*, 501 U.S. at p. 436); and the person actually submitted to that authority (*Hodari D., supra*, 499 U.S. at p. 626) for reasons not "independent" of the official show of authority (*Florida v. Bostick, supra*, 501 U.S. at p. 436). Admittedly, the application of this test to particular circumstances is sometimes more an art than a science. (See *Michigan v. Chesternut, supra*, 486 U.S. at p. 573 [the test "is necessarily imprecise"].) As the high court has emphasized, "for the most part *per se* rules are inappropriate in the Fourth Amendment context. The proper inquiry necessitates a consideration of 'all the circumstances surrounding the encounter.'" (*United States v. Drayton* (2002) 536 U.S. 194, 201; accord, *People v. Souza* (1994) 9 Cal.4th 224, 235.) In this case, defendant has not shown that he, as the passenger, was the subject of the deputy's show of authority or that he actually submitted to it.

Deputy Brokenbrough's flashing lights were directed at the driver, Karen Simeroth, and not at defendant. Indeed, the record does not indicate that Brokenbrough was even aware defendant was in the car prior to the vehicle stop. Once the car came to a stop, the deputy approached the driver's side of the vehicle, without blocking defendant's exit, brandishing a weapon at him, or making any intimidating movements towards him. In these circumstances, one cannot say that defendant was the subject of the deputy's investigation or show of authority prior to the time the deputy ordered him out of the vehicle. (See *United States v. Drayton, supra*, 536 U.S. at pp. 203-204 [no seizure occurred when officers boarded the bus and began questioning passengers].)

Rather, "[a]n officer causing a vehicle to pull over in transit is conducting an investigatory stop of the *driver*." (*People v. Jackson, supra*, 39 P.3d at p. 1182, italics added.) "[T]he display of authority and control is directed at the driver, not the passenger." (*Id.* at p. 1185.) "While we are all familiar with the sinking feeling a driver experiences upon seeing police lights in the rearview mirror, few of us sense impending doom when we are in the passenger seat." (*Cartwright, supra*, 72 Cal.App.4th at pp. 1374-1375; see also *People v. Jackson, supra*, at p. 1185.) Thus, as the dissent concedes, "[a] passenger may not be the subject of a police investigation, at least in the initial phase of the traffic stop." (Dis. opn., *post*, at p. 2.)

More importantly, defendant, as the passenger, had no ability to submit to the deputy's show of authority. As the *Cartwright* court noted, the passenger "is not a participant in the stop, but an observer." (*Cartwright, supra*, 72 Cal.App. 4th at p. 1375.) Not only is the driver the one the officer is seeking to restrain, but the driver is the only one who, by stopping the car, can submit to the officer's assertion of authority. The passenger may be asleep or otherwise unaware of the officer's presence. The passenger may disagree with the driver's decision to submit to the officer's authority and

may even object vociferously, but to no effect. "The passenger simply has no say in the matter." (*Id.* at p. 1367.)

To be sure, the passenger must in most cases remain in the car until it stops, and to that extent (as the dissent points out) the passenger's freedom is curtailed. But it is critical, for purposes of the Fourth Amendment analysis, to determine *why* the passenger's freedom is curtailed. Although defendant points out that "it is simply not possible for a passenger to avoid being literally and physically detained under these circumstances, however momentarily," this is so because, under the vast majority of circumstances, it is unsafe for the passenger to exit a moving vehicle. The passenger will also, in most cases, prefer to await the completion of the traffic stop and continue en route in the company of the driver. Neither factor, however, means that the passenger has been seized within the meaning of the Fourth Amendment. (*Florida v. Bostick, supra*, 501 U.S. at p. 436 ["Bostick's freedom of movement was restricted by a factor independent of police conduct—*i.e.*, by his being a passenger on a bus"]; see generally *United States v. Drayton, supra*, 536 U.S. at p. 206 ["The arrest of one person does not mean that everyone around him has been seized by police"].) The "liberty" contemplated by the high court's definition of a seizure—i.e., "when, 'taking into account all of the circumstances surrounding the encounter, the police conduct would "have communicated to a reasonable person that he was not at *liberty* to ignore the police presence and go about his business"'" (*Kaupp v. Texas* (2003) 538 U.S. 626, 629 italics added)—refers not to whether the individual has the physical *capacity* to leave the scene but to whether, assuming the individual had the physical capacity to do so, he or she would feel free to depart or otherwise to conduct his or her affairs as though the police were not present. (See *Bostick, supra*, 501 U.S. at p. 436 [that "Bostick's movements were 'confined' . . . says nothing about whether or not the police conduct at issue was coercive"].) After all, an individual may

manifest an unwillingness to engage with the police not only by departing the area, but also by staying put and declining to answer questions or otherwise ignoring police inquiries. Similarly, a seizure can occur even though the individual has the physical capacity to leave the scene.

Neither defendant nor the dissent ever explains why the same analysis should not apply to the detention of a *moving* vehicle containing a driver and passenger and the detention of a *parked* vehicle containing a driver and passenger—or, for that matter, the detention of a motorcycle or a bicycle with a driver and passenger. (Cf. *United States v. Drayton, supra*, 536 U.S. at p. 204 [that the encounter took place on a bus rather than on the street "does not on its own transform standard police questioning of citizens into an illegal seizure"].) Absent some directive from the police, and as long as the rules of the road are otherwise obeyed, the passenger is free to do what the driver cannot—i.e., exit the vehicle or dismount from the motorcycle or bicycle and thereby terminate the encounter with the officer. (Cf. *U.S. v. Slater* (8th Cir. 2005) 411 F.3d 1003, 1005 [passenger was not seized while driver took field sobriety tests].) In this case, for example, defendant indicated his awareness of the available options by opening, and then closing, the passenger door.

The distinction between a passenger whose progress is stopped because the driver is seized and a passenger who is himself or herself seized is consistent with the high court's analysis in *Maryland v. Wilson, supra*, 519 U.S. 408, which addressed the separate issue whether a police officer may as a matter of course order not just the driver to exit the vehicle during a traffic stop, but the passengers as well. The high court found that in light of the interest in officer safety, ordering the passenger out of the vehicle was not an unreasonable seizure, but declined to decide whether the passenger could be held for the entire duration of the stop. (*Id.* at p. 415, fn. 3.) The high court did, however, acknowledge one important distinction between the driver and the passengers:

"There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers. But *as a practical matter*, the passengers are already stopped by virtue of the stop of the vehicle." (*Id.* at pp. 413-414, italics added.) Justice Stevens's dissenting opinion agreed with the majority's implied distinction between being stopped as a *practical* matter and being seized as a *constitutional* matter: the intrusion on a passenger's freedom of movement occasioned by the traffic stop "was a necessary by-product of the lawful detention of the driver. But the passengers had not yet been seized at the time the car was pulled over, any more than a traffic jam caused by construction or other state-imposed delay not directed at a particular individual constitutes a seizure of that person." (*Id.* at p. 420 (dis. opn. of Stevens, J.).)

The rule proposed by the defendant and endorsed by the Court of Appeal and the dissent here, in which a seizure occurs whenever the defendant's freedom of movement "is significantly curtailed by an officer's act of making the driver stop the car," would find a seizure in these circumstances of state-imposed delay. Indeed, the proposed rule would encompass even those motorists following the vehicle subject to the traffic stop who, by virtue of the original detention, are forced to slow down and perhaps even come to a halt in order to accommodate that vehicle's submission to police authority. It would be inaccurate to say that these motorists, whose journey is interrupted by virtue of the traffic stop of another vehicle but who do not actually submit to the show of police authority, are seized within the meaning of the Fourth Amendment. The same is true of a passenger such as defendant, who likewise suffers a curtailment of his freedom but does not actually submit to the show of police authority.[4]

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[4] The dissent asserts that the requirement of submission "simply does not apply in these circumstances" (dis. opn., *post*, at p. 3), but, as the high

Defendant's proposed rule would also make unduly problematic the determination of when a seizure has ended. He asserts that "[w]hether a passenger remains detained thereafter may depend upon whether, under the circumstances, a reasonable person would feel free to leave while the officer deals with the driver." But very rarely does the officer affirmatively express an investigative interest (or lack thereof) in the passengers of a detained vehicle. The officer's interest in such circumstances, as defendant concedes, is with the driver. This suggests that, under defendant's approach, the alleged seizure of a passenger must terminate of its own accord, either by the passage of time or by the officer's focus on the driver. If the seizure terminates simply by the passage of time, then the question arises of how many minutes the passengers must wait. If, on the other hand, the seizure terminates at the end of the traffic stop or as soon as the

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court has made clear, a seizure "requires *either* physical force . . . *or*, where that is absent, *submission* to the assertion of authority. [¶] . . . 'There can be no arrest without either touching or submission.'" (*Hodari D., supra*, 499 U.S. at pp. 626-627.)

Moreover, the dissent's analysis would effectively diminish protections for passengers. If, as the dissent contends, a traffic stop inflexibly results in a seizure of the passengers until the officer explicitly says otherwise, then any passenger who nonetheless tried to proceed on his or her way could be arrested under Penal Code section 148 (and then subjected to a search incident to the arrest) for resisting or delaying the officer in the performance of his or her duties. (See, e.g., *In re Muhammad C.* (2002) 95 Cal.App.4th 1325, 1329; *People v. Quiroga* (1993) 16 Cal.App.4th 961, 967.) We think it more sensible to leave it up to the officer, once cause for the vehicle stop has been established, to decide who should be seized and when. And, in light of the high court's "clear direction that an assessment as to whether police conduct amounts to a seizure implicating the Fourth Amendment must take into account '"all of the circumstances surrounding the incident"' in each individual case" (*Michigan v. Chesternut, supra*, 486 U.S. at p. 572), it is also more appropriate to examine the totality of the circumstances before determining whether the passenger has been seized during a traffic stop.

officer tells the passengers they are free to leave, then it follows that the passengers are *also* at liberty to go about their business if, at an even earlier stage, the passengers can reasonably draw that same inference about the focus of the officer's investigation or show of authority. In this case, for example, defendant reasonably would have surmised that Deputy Brokenbrough was focused on the driver when the traffic stop was initiated. Because defendant knew he was free to ignore the police presence and go about his business at that stage, even if he was unable as a practical matter to leave the scene until the car came to a halt, he could not have been seized merely by the initiation of the traffic stop.

The dissent would find that passengers generally, and defendant in particular, are seized from the inception of every traffic stop, but the dissent's reasoning is faulty. Although the dissent concedes that a passenger may not be the subject of the police investigation, at least in the initial phase of the traffic stop, it contends that a seizure nonetheless occurs because "the officer *has the authority*, as a matter of law, to order that the passengers . . . get out of the vehicle" once the vehicle pulls over. (Dis. opn., *post*, at p. 1, italics added.) We do not doubt the officer has such authority, which is recognized explicitly in *Maryland v. Wilson, supra*, 519 U.S. at page 410, nor do we dispute that the passenger is seized once the officer *actually invokes that authority to order the passenger out of the car*. But the dissent offers no authority for its critical assumption that the mere *potential* an officer *might* invoke such authority itself constitutes a seizure.

The dissent also asserts that the failure to deem a passenger automatically seized in every traffic stop will lead to anomalous consequences in that the driver, who has been seized, will be able to suppress the fruits of an unlawful seizure, but the passenger, who has not been seized, may not be able to obtain such relief. If this is an anomaly, it is hardly unique, inasmuch as the potential for unequal treatment has

existed under similar circumstances ever since the high court abolished automatic standing. In *Rakas v. Illinois, supra*, 439 U.S. 128, for example, the high court held that mere passengers—unlike drivers or owners of the vehicle—had no legitimate expectation of privacy that was violated by a vehicle search. (*Id.* at pp. 148-149; accord, *People v. Valdez, supra*, 32 Cal.4th at p. 122). The high court has also remarked that a casual visitor would similarly be unable to challenge a house search (*Rakas, supra*, at p. 142; accord, *People v. Ooley* (1985) 169 Cal.App.3d 197, 202-203; see also *People v. Ayala, supra*, 23 Cal.4th at p. 255 [invitee or social guest has no expectation of privacy in business premises]), although the owner or other residents would be able to do so.

Thus, the Fourth Amendment does not concern itself with "treat[ing] driver and passenger alike" in all circumstances (dis. opn., *post*, at p. 5), nor does assuring equity between drivers and passengers justify expanding the reach of the exclusionary rule beyond what the Fourth Amendment requires. (See *Alderman v. United States* (1969) 394 U.S. 165, 174 ["There is no necessity to exclude evidence against one defendant in order to protect the rights of another"].) "'Each time the exclusionary rule is applied it exacts a substantial social cost for the vindication of Fourth Amendment rights. Relevant and reliable evidence is kept from the trier of fact and the search for truth at trial is deflected.'" (*In re Lance W.* (1985) 37 Cal.3d 873, 882, quoting *Rakas v. Illinois, supra*, 439 U.S. at p. 137.) Accordingly, "the deterrent purpose of the exclusionary rule does not require its application when unlawfully seized evidence is offered against a defendant whose own rights have not been compromised by the unlawful seizure." (*Lance W.*, at p. 882.)

We emphasize that passengers who are in vehicles subjected to unjustified traffic stops are not without constitutional protection. Once the vehicle has been stopped, the passenger may not be detained thereafter without reasonable

suspicion the passenger is involved in criminal activity. (*People v. Souza, supra*, 9 Cal.4th at p. 230; cf. *Maryland v. Wilson, supra*, 519 U.S. at p. 410 [police may order the driver and passengers of a "lawfully stopped" car to exit the vehicle].) Furthermore, neither the passenger nor the passenger's belongings in the vehicle may be searched without lawfully acquired cause to justify an arrest (*New York v. Belton* (1981) 453 U.S. 454) or a search (*Wyoming v. Houghton* (1999) 526 U.S. 295). A passenger in a car subjected to an unjustified stop may also be able to prosecute a civil suit against the police under the rubric of substantive due process. (See *County of Sacramento v. Lewis, supra*, 523 U.S. at pp. 844-845.) There is thus no need to torture the definition of a seizure to protect the security of passengers.

We therefore hold that because the deputy effected a traffic stop of Simeroth's vehicle without any indication that defendant, the vehicle's passenger, was the subject of his investigation or show of authority, defendant was not seized when Simeroth submitted to the deputy's show of authority and brought the vehicle to a stop. Because defendant claims only that the traffic stop itself constituted a seizure, we need not consider whether defendant was seized when Deputy Brokenbrough asked him to identify himself or whether, assuming such conduct constituted a seizure, it was justified by the deputy's reasonable suspicion that he was a parolee at large.

DISPOSITION

The judgment of the Court of Appeal is reversed.

BAXTER, J.

WE CONCUR:

GEORGE, C.J.
KENNARD, J.
CHIN, J.

DISSENTING OPINION BY CORRIGAN, J.

I respectfully dissent. Passengers in a vehicle pulled over for a traffic stop are not free to leave, in either a practical or a constitutional sense. Certainly no one can safely leave the vehicle before it stops. Once it has pulled over, the officer has the authority, as a matter of law, to order that the passengers remain inside (*People v. Castellon* (1999) 76 Cal.App.4th 1369, 1374-1375), or get out of the vehicle (*Maryland v. Wilson* (1997) 519 U.S. 408, 410). This authority is soundly based on the need to protect the officer's safety. One of its necessary consequences, however, is that the passengers, having been forced to interrupt their journey, are deprived of further freedom of movement. Accordingly, the passengers have been detained and thus "seized" for Fourth Amendment purposes.

The precedents cited by the majority support this conclusion, or are distinguishable. Under the *Mendenhall* test, a person is detained if, under the circumstances, "a reasonable person would have believed that he was not free to leave." (*United States v. Mendenhall* (1980) 446 U.S. 544, 554.) When a police officer effects a traffic stop, a passenger's freedom of movement has been restrained by the intentional act of a government agent. (*County of Sacramento v. Lewis* (1998) 523 U.S. 833, 844.) The passenger is detained for a reason that is not "independent of police conduct." (*Florida v. Bostick* (1991) 501 U.S. 429, 436.) Indeed, the passenger's freedom of movement is abruptly interrupted precisely because of the officer's conduct.

The situation was quite different in *Bostick*. There, the defendant was a passenger sitting on a parked bus. When the officers boarded he was going nowhere. His freedom of movement was not curtailed by anything the officers said or did. (*Florida v. Bostick, supra*, 501 U.S. at pp. 431-432, 436.) Further, the *Bostick* court did not hold that there was no seizure. It simply rejected the state court's conclusion that

officers may not ask bus passengers for consent to search. (*Id.* at p. 437.) As Justice O'Connor pointed out for the majority, well-settled Fourth Amendment jurisprudence would have allowed the officers to ask Bostick for his consent to search in the terminal, on the street, or in an airport. (*Id.* at p. 434.) The mere fact that consent to search was sought on a parked bus was not dispositive.

California v. Hodari D. (1991) 499 U.S. 621 does hold that submission to governmental authority is required for a detention to take place. Hodari and other young men were standing on a street and fled when police drove by. Hodari discarded contraband as he ran from an officer. The Court of Appeal suppressed the evidence on the ground that Hodari was detained when he saw the officer running toward him. (*Id.* at pp. 622-623.) The United States Supreme Court reversed, ruling that when a suspect does not yield to a show of authority, no seizure occurs. (*Id.* at p. 626.) Flight is clearly not the same as submission. However, the *Hodari D.* court had no occasion to consider anything like the situation of passengers during a traffic stop.

A passenger may not be the subject of a police investigation, at least in the initial phase of the traffic stop.[1] Passengers are detained for a different and equally important purpose: to ensure the safety of the officer. The actual submission requirement discussed by the *Hodari D.* court simply does not apply in these circumstances, which present entirely distinct practical and legal considerations.[2] Individ-

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[1] In some cases, of course, the officer initiates a traffic stop to investigate a passenger. (See, e.g., *In re William J.* (1985) 171 Cal.App.3d 72, 77.) In those cases, the vehicle's occupants will often be unaware of the reason for the stop. Nevertheless, the rule adopted in the majority opinion requires the suspect to realize that he or she is the focus of the officer's investigation for the Fourth Amendment to apply.

[2] The majority reasons that if passengers are detained during a traffic stop for Fourth Amendment purposes, they would be subject to prose-

uals on the street submit to an officer's authority by stopping or remaining in place in response to the officer's directions. An individual who sees a policeman and runs away has demonstrably not submitted to police authority.

Vehicle passengers are in a different situation. They stop when the car stops. If the driver pulls over in response to an officer's show of authority, the passengers' freedom of movement is curtailed to the same extent as the driver's. As the majority notes, "a police officer may as a matter of course order not just the driver to exit the vehicle during a traffic stop, but the passengers as well." (Maj. opn., *ante*, at p. 14; see *Maryland v. Wilson, supra*, 519 U.S. at p. 410.) The officer may also order the passengers to stay in the car. (*People v. Castellon, supra*, 76 Cal.App.4th at pp. 1374-1375; *United States v. Moorefield* (3rd Cir. 1997) 111 F.3d 10, 12-13.)[3] This per se rule, based on the need to ensure officer

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cution for "fleeing from a proper investigative detention" (Pen. Code, § 148) if they attempt to leave the scene. (Maj. opn., *ante*, at pp. 15-16, fn. 4.) However, that liability would arise only after a passenger became the subject of the officer's investigation. For this purpose, the rule proposed by the majority functions well. Penal Code section 148 would apply to passengers who flee in circumstances that would indicate they were the subject of the officer's investigation.

[3] While the United States Supreme Court has yet to address whether passengers may be ordered to remain in a vehicle during a traffic stop, the reasoning of the *Castellon* and *Moorefield* courts on this point is sound. The same considerations of officer safety that justify the rule authorizing the removal of passengers from a vehicle support allowing the officer to keep the passengers inside. (*People v. Castellon, supra*, 76 Cal.App.4th at pp. 1374-1375; *United States v. Moorefield, supra*, 111 F.3d at p. 13; see also *State v. Shearin* (N.C.Ct.App. 2005) 612 S.E.2d 371, 377-378 [citing cases]; cf. *Maryland v. Wilson, supra*, 519 U.S at p. 413.) A rule permitting passengers to leave the vehicle and wander around outside the officer's field of vision during a traffic stop would be a dangerous one indeed.

I would disapprove *Castellon*, however, insofar as it held that passengers are not detained from the inception of a traffic stop. (*People v. Castellon, supra*, 76 Cal.App.4th at pp. 1373-1374.)

safety, requires no showing of reasonable suspicion. (*Maryland v. Wilson, supra*, 519 U.S at p. 412.) Driver and passenger alike are "subjected to the demands and control of the police officer" during the stop. (*United States v. Kimball* (1st Cir. 1994) 25 F.3d 1, 5.)

The *Wilson* court observed that "[o]n the personal liberty side of the balance, the case for the passengers is in one sense stronger than that for the driver. There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers." (*Maryland v. Wilson, supra*, 519 U.S at p. 413.) The court decided the intrusion on passengers' liberty is nevertheless justified, partly because "as a practical matter, the passengers are already stopped by virtue of the stop of the vehicle." (*Id.* at p. 414.) By stopping the vehicle, the officer has exerted authority over everyone in it. Because the liberty interest of passengers is *stronger* than that of drivers, they too should be afforded the protections of the Fourth Amendment.

To conclude that passengers are free to leave the scene until an officer actually exercises the authority granted by *Wilson* (maj. opn., *ante*, at p. 17), overlooks the fact that the officer has already interfered with the passengers' freedom of movement. It is not, as the majority suggests, the mere potential that an officer might order a passenger out of the car that results in a detention. It is also the prior actual application of the officer's authority in pulling the vehicle over. The stop gives rise to the officer's legitimate power under *Wilson* and *Castellon* to control the passengers' movements without any particularized justification. That official control differentiates passengers detained during a traffic stop from other citizens who are only incidentally impeded by an exercise of state authority. (See maj. opn., *ante*, at p. 15.)

The majority's approach leads to anomalous consequences. For example, when an officer pulls over a car, the driver and passengers may all be considered to be in constructive

possession of contraband found in the vehicle. Under the majority's rule, however, the driver would be protected by the Fourth Amendment but the passengers would not, even though the Supreme Court has described the passengers' liberty interest as stronger than the driver's. The majority also bars passengers from challenging the traffic stop if the officer arrests them before exerting any authority under *Wilson*, but would permit passengers to challenge the stop if the grounds for arrest were discovered after the officer gave directions controlling their movements. It is true, as the majority observes, that Fourth Amendment jurisprudence is not free of anomaly. (Maj. opn., *ante*, at p. 18.) However, when given the opportunity, we should eschew incongruity. Surely consistency is preferable to anomaly.

I would hold that passengers are "seized" from the time a car is pulled over until the officer ends the restraint on their liberty, either by telling them they are free to leave or by releasing the occupants of the vehicle after completing the traffic stop. This approach satisfies the majority's concern with determining when a seizure ends. (Maj. opn., *ante*, at p. 16.) It provides a clear and easily applied rule, and imposes no additional burdens on law enforcement. It is consistent with the policy of granting police officers broad latitude to control the movements of passengers during traffic stops. It treats driver and passenger alike, protecting and clarifying their rights and obligations.

The majority contends such a per se rule is inconsistent with Fourth Amendment jurisprudence requiring consideration of all the circumstances of the individual case in determing whether there has been a "seizure." (Maj. opn., *ante*, at p. 16, fn. 4.) However, the *Wilson* court made an express exception to the usual practice of avoiding bright-line rules in the Fourth Amendment context when it decided that passengers, like drivers, may routinely be ordered to leave the vehicle during a traffic stop. (*Maryland v. Wilson, supra*, 519

U.S at p. 413, fn. 1.) The per se rule of *Wilson* justifies the rule proposed here. Because, as a matter of law, passengers' freedom of movement is subject to the control of the officer during a traffic stop, passengers should be permitted as a matter of law to challenge the legality of the stop. No conflict with the body of Fourth Amendment law arises from this commonsense approach. Further, the analysis takes into account the most relevant circumstance: the passengers' freedom has been limited by the officer's exercise of authority.

The majority expresses concern about unduly expanding the reach of the exclusionary rule. (Maj. opn., *ante*, at p. 18.) However, no evidence discovered during the course of a legally justified traffic stop would be affected if we held that passengers are seized along with drivers. The majority acknowledges that most jurisdictions have accepted that rule, and the weight of authority on this point is indeed substantial. Eight of the federal circuit courts of appeal hold that passengers are detained during a traffic stop.[4] There are no cases on point from the other four circuits. Twenty-one state courts have adopted the same view.[5] The majority refers to

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[4] See *United States v. Woodrum* (1st Cir. 2000) 202 F.3d 1, 5 (characterizing the rule as "doctrinal bedrock"); *United States v. Rusher* (4th Cir. 1992) 966 F.2d 868, 874, footnote 4; *United States v. Grant* (5th Cir. 2003) 349 F.3d 192, 196; *United States v. Perez* (6th Cir. 2003) 440 F.3d 363, 369; *United States v. Powell* (7th Cir. 1991) 929 F.2d 1190, 1195; *United States v. Green* (8th Cir. 2001) 275 F.3d 694, 699; *United States v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095; *United States v. Eylicio-Montoya* (10th Cir. 1995) 70 F.3d 1158, 1162-1164.

[5] See *State v. Gomez* (Ariz.Ct.App. 2000) 6 P.3d 765, 766; *State v. Bowers* (Ark. 1998) 976 S.W.2d 379, 381; *State v. Hernandez* (Fla.Dist.Ct.App. 1998) 718 So.2d 833, 836; *State v. Cooper* (Ga.Ct.App. 2003) 579 S.E.2d 754, 756; *State v. Haworth* (Idaho 1994) 679 P.2d 1123, 1124; *People v. Bunch* (Ill. 2003) 796 N.E.2d 1024, 1029; *McKnight v. State* (Ind. Ct.App. 1993) 612 N.E.2d 586, 588; *State v. Eis* (Iowa 1984) 348 N.W.2d 224, 226; *State v. Hodges* (Kan. 1993) 851 P.2d 352, 360-362; *In re Albert S.* (Md.Ct.Spec.App. 1995) 664 A.2d 476, 480-481; *State v. Harms* (Neb. 1989) 449 N.W.2d 1, 4-5; *State v. Scott* (Nev. 1994)

only two states where its analysis is followed.[6] If the results of permitting passengers to challenge traffic stops were crippling to law enforcement, one would expect the practice to be less widely followed. At least one state, Wisconsin, has reconsidered and rejected its former minority view. (*State v. Harris, supra*, 557 N.W.2d at pp. 248, 251.) The majority opinion provides no sound basis in reason or policy to depart from the rule followed in nearly all other jurisdictions that have considered the question. California too should grant passengers the same Fourth Amendment rights as drivers during traffic stops.

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877 P.2d 503, 508; *State v. Creech* (N.M.Ct.App. 1991) 806 P.2d 1080, 1082 (but see *State v. Affsprung* (N.M.Ct.App. 2004) 87 P.3d 1088, 1092-1094); *People v. Smith* (App.Div. 1984) 483 N.Y.S.2d 62, 63; *State v. Carter* (Ohio 1994) 630 N.E.2d 355, 360; *State v. Scott* (Or.Ct.App. 1982) 650 P.2d 985, 987, and footnote 4 (relying on statute, but noting that Fourth Amendment protected passenger's expectation not to be stopped without reasonable suspicion); *State v. Wilson* (S.D. 2004) 678 N.W.2d 176, 181; *Kothe v. State* (Tex.Crim.App. 2004) 152 S.W.3d 54, 61; *State v. Harris* (Wis. 1996) 557 N.W.2d 245, 251; *Parkhurst v. State* (Wyo. 1981) 628 P.2d 1369, 1374 (relying on state constitution); *State v. Otteson* (Utah Ct.App. 1996) 920 P.2d 183, 185.

[6] See *People v. Jackson* (Colo. 2002) 39 P.3d 1174, 1184-1186; *State v. Mendez* (Wn. 1999) 970 P.2d 722, 729; maj. opn., *ante*, at page 7.

The Delaware courts appear to acknowledge that the majority opinion's view is technically correct, but nevertheless permit passengers to challenge the basis for a traffic stop. (*Jarvis v. State* (Del. 1991) 600 A.2d 38, 41, fn. 1; *Harris v. State* (Del.Supr.Ct. 2002) 806 A.2d 119, 123, fn. 9.)

In *State v. Affsprung, supra*, 87 P.3d at pages 1092-1094, the New Mexico Court of Appeals assumed a passenger was not detained at the same time as a driver, and conducted a fact-specific analysis, without referring to an earlier New Mexico case holding that passengers may challenge the grounds for a traffic stop (*State v. Creech, supra*, 806 P.2d at p. 1082).

CORRIGAN, J.

I CONCUR:

WERDEGAR, J.
MORENO, J.

IN THE SUPREME COURT OF CALIFORNIA
Court of Appeal
Third Appellate District

[Filed AUG. 30, 2006]

No. C040754, S123133
En Banc

THE PEOPLE,
Plaintiff and Respondent,

v.

BRUCE EDWARD BRENDLIN,
Defendant and Appellant.

Petition for rehearing DENIED.

Werdeger, Moreno, and Corrigan, JJ., are of the opinion the petition should be granted.

GEORGE
Chief Justice